THE

Justice of the Peace,

AND

PARISH OFFICER.

By RICHARD BURN, LL.D.

LATE CHANCELLOR OF THE DIOCESE OF CARLISLE.

THE TWENTY-FOURTH EDITION:
With CORRECTIONS, ADDITIONS, and IMPROVEMENTS.
The CASES brought down to the End of Trinity Term,
5 GEO. IV. 1824.
And the STATUTES to the End of 5 GEO. IV. 1824.

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BARRISTER AT LAW,
AND CHAIRMAN OF THE GENERAL QUARTER SESSIONS OF THE PEACE
FOR THE COUNTY OF STAFFORD.

Dr. Burn has great merit: He has done great service, and deserves great commendation.—*Per* Lord MANSFIELD C. J. Burr. S. C. 548.

IN FIVE VOLUMES.

VOL. V.

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A TABLE OF THE NAMES OF CASES IN THIS VOLUME.

S.

T.

V.



A TABLE

OF

THE STATUTES

IN THIS VOLUME.

TABLE OF THE NAMES OF TITLES,

CONTAINED IN THE FIFTH VOLUME.

Rape.

§ I. What it is.

RAPE is when a man hath carnal knowledge of a woman, by force and against her will. 2 *Inst.* 180. 1 *Hawk.* *c.* 41. § 1. Rape, what.

It having been doubted whether a rape could be committed upon a female child under ten years of age, stat. 18 *Eliz.* *c.* 7. § 4. "for a plain declaration of the law," enacts, "*that if any person shall unlawfully and carnally know and abuse any woman child under the age of ten years, every such unlawful and carnal knowledge shall be felony, and the offender, being duly convicted, shall suffer as a felon, without allowance of clergy.*" 18 El. c. 7. Knowing a woman child carnally.

The offence of a rape is no way mitigated by shewing that the woman at last yielded to the violence, if such her consent were forced by fear of death or of duress. 1 *Haw.* *c.* 41. § 2. Consenting at last.

Also, it is not a sufficient excuse in the ravisher to prove that the woman is a common strumpet; for she is still under the protection of the law, and may not be forced. 1 *Haw.* *c.* 41. § 2. Ravishing a common strumpet.

Nor is it any excuse that she consented after the fact. 1 *Haw.* *c.* 41. § 2. Consenting after the fact.

It appears at one time to have been thought, that the carnal knowledge of a child above the age of ten and under twelve years was rape, though she consented; twelve years being the age of consent in a female, and the statute 3 *Ed.* 1. (*Westm.* 1.) *c.* 13. which enacts, "that none do ravish any maiden *within age*, neither by her own consent nor without," being admitted to refer by the words "within age," to the age of twelve years. It is, however, now well established, that if the child be above ten years old, it is not a felonious rape, unless it be against her will and consent. But children above that age, and under twelve, are still within the protection of this statute of *Westm.* 1. *c.* 13., the law with respect to the carnal knowledge of such children not having been altered by either of the subsequent statutes of *Westm.* 2. *c.* 34., or 18 *Eliz.* *c.* 7. The statute, *Westm.* 1. *c.* 13., makes the deflowering a child above ten years old and under twelve, though with her own consent, a misdemeanor, punishable by two years' imprisonment, and fine at the king's pleasure. 1 *Russ.* 810. 1 *East's P. C.* 436. 3 Ed. 1. c. 13. The carnal knowledge of a child above ten and under twelve years old, made a misdemeanor.

Woman ravished conceiving.

It is said by Mr. *Dalton*, (*c.* 160.) that if a woman at the time of the supposed rape do conceive with child by the ravisher, this is no rape; for (he says) a woman cannot conceive except she doth consent. But Mr. *Hawkins* observes that this opinion seems very questionable; not only because the previous violence is no way extenuated by such a subsequent consent; but also, because if it were necessary to shew that the woman did not conceive, the offender could not be tried till such time as it might appear whether she did or not; and likewise because the philosophy of this notion may be very well doubted of. 1 *Haw. c.* 41. § 9. And Ld. *Hale* says, this opinion in *Dalton* seems to be no law. 1 *Hale*, 631.

Having carnal knowledge of a married woman under circumstances which induce her to suppose it is her husband, is not a rape. *Rex* v. *Jackson, Trin. T.* 1822. *MS. C. C. R.*

§ II. Evidence on an Indictment of Rape.

The woman's oath.

The party ravished may give evidence on oath, and is in law a competent witness; but the credibility of her testimony, and how far forth she is to be believed, must be left to the jury, and is more or less credible according to the circumstances of fact that concur in that testimony. 1 *Hale*, 633.

Circumstances in favour of it.

For instance, if the witness be of good fame; if she presently discovered the offence, and made pursuit after the offender; shewn circumstances and signs of the injury, whereof many are of that nature that only women are the most proper examiners and inspectors; if the place wherein the fact was done were remote from people, inhabitants, or passengers; if the offender fled for it; these, and the like, are concurring evidences to give greater probability to her testimony, when proved by others as well as herself. 1 *Hale*, 633.

Circumstances in disfavour of it.

But, on the other side, if she concealed the injury for any considerable time after she had opportunity to complain; if the place where the fact was supposed to be committed were near to inhabitants or common recourse or passage of passengers, and she made no outcry when the fact was supposed to be done, when and where it is probable she might be heard by others; or if a man prove himself to be in another place, or in other company, at the time she charges him with the fact; or if she be wrong in the description of the place, or swear the fact to be done in a place where it was impossible the man could have access to her at that time, as if the room were locked up, and the key in the custody of another person; these and the like circumstances carry a strong presumption that her testimony is false or feigned. 1 *Hale*, 633.

General Observations.

In a work of this nature, it is not necessary to enter into a detail of the judicial opinions that have at different times been delivered on this subject; they are chronologically and correctly given at large in 1 *East's P. C. c.* 10. § 3. It is sufficient to state generally, that now the judges consider it to be the law of the land, that emission as well as penetration must take place to constitute the offence. But though there must be an emission, it is not necessary that there should be direct and positive evidence of that fact: this, like all other facts, may be established in proof by the circumstances attending it. In various cases the female can-

General Observations.

not swear to the fact, though it take place; as in the instance of infants; or in the case of some adults, who may have been rendered senseless by the previous violence of the man, or of others, who are never conscious of the fact when it does take place. Without, however, entering more minutely into the discussion of such a subject, it will be a sufficient hint to magistrates, before whom a person may be brought charged with this crime, to attend to this distinction; if penetration be proved, and it appear on the whole that the man gratified his passion and appeared to be satisfied, it will be evidence from which a jury would be directed to infer emission; and consequently in such a case the magistrates ought to commit the party to take his trial for the capital offence. But if, on the contrary, the man were disturbed or interrupted before he appeared to have completed his purpose, a jury would probably infer that there had been no emission; and in such a case the justices should commit or bind the party over to take his trial for a misdemeanor, (viz.) an attempt to commit a rape only.

And with regard to penetration, it will be sufficient to make one observation only; that any penetration, however trifling, though it do not break the hymen, is sufficient for this purpose. *R.* v. *Russen, O. B. Oct.* 1777. 1 *East's P. C.* 438.

Infant a witness.

It has been made a doubt, at different periods in the history of our courts of law, at what particular age an infant could be sworn to prove a rape, or an assault with intent to ravish her; and at one time a rule appears to have prevailed, that no child could be admitted as a witness *under* the age of nine years, and very few under ten. *R.* v. *Travers,* 1 *Str.* 700. *R.* v. *Dunnel,* 1 *East's, P. C.* 442. But it appears now to be well established, that a child of any age, if capable of distinguishing between good and evil, may be examined upon oath; but that, whatever may be its age, it cannot be examined unless sworn. *Brazier's case, Reading Spr. Ass.* 1779. 1 *East's P. C.* 443, 444. By such capability of distinguishing between good and evil, must be understood a belief in God, or in a future state of rewards and punishments; from which the court may be satisfied that the witness entertains a proper sense of the danger and impiety of falsehood. *White's case,* 1 *Leach,* 430. (See title Infant, Vol. III. p. 76.)

It appears to have been allowed, that the fact of the child's having complained of the injury recently after it was received, is confirmatory evidence; but where the child is not fit to be sworn, it is clear that any account which it may have given to others, ought not to be received. 1 *Russ.* 812. *citing Brazier's case, supra. See Phill. Ev.* 19. 222. *6th edit.* Thus on an indictment for a rape on a child of five years of age, where the child was not examined, but an account of what she had told her mother about three weeks after the transaction was given in evidence by the mother, and the jury convicted the prisoner principally, as was supposed, on that evidence; the judges, on a case reserved for their opinion, thought the evidence clearly inadmissible; and the prisoner was accordingly pardoned. *Tucker's case, Exeter Spr. Ass.* 1808. *cor. Marshall* Serjt. *MS. C.C.R. Ante,* Vol. III. p. 76.

When the child has appeared not sufficiently to understand the nature and obligation of an oath, judges have often thought it necessary, for the purposes of justice, to put off the trial of a prisoner, directing that the child in the meantime should be pro-

perly instructed. Thus, in a criminal prosecution that was coming on to be tried before *Rooke* J. at *Gloucester*, finding that the principal witness was an infant, who was wholly incompetent to take an oath, postponed the trial till the following assizes, and ordered the child to be instructed in the meantime by a clergyman in the principles of her duty, and the nature and obligation of an oath. At the next assizes the prisoner was put upon his trial, and the girl being found by the court, on examination, to have a proper sense of the nature of an oath, was sworn, and upon her testimony the prisoner was convicted, and afterwards executed. Mr. *J. Rooke* mentioned this at the *O. B.* in 1795, in the case of *Patrick Murphy*, who was indicted for a rape on a child of *seven* years old, and the learned judge added, that upon a conference with the other judges upon his return from the circuit, they unanimously approved of what he had done. *Vide* 2 *Bac. Abr.* 577. (*n*). 1 *Leach*, 430. (*n*.)

In a case where the party ravished had died before the trial, her deposition, corroborated by other evidence of actual force and penetration, was held sufficient to warrant a conviction, though there did not appear to be any direct evidence of emission. It was left to the jury to determine whether the crime had been completed by penetration and emission; and they were directed that they might collect the fact of emission from the evidence, though the unfortunate girl was dead, and could not therefore give any further account of the transaction, than that which was contained in her deposition before the magistrate. *Rex* v. *Fleming and Windham*, 2 *Leach*, 854.

Where the evidence of children is admitted, it is much to be wished, in order to render their evidence credible, that there should be some concurrent testimony of time, place, and circumstances, in order to make out the fact; and that the conviction should not be grounded singly on the unsupported accusation of an infant under years of discretion. There may be, therefore, in many cases of this nature, witnesses who are competent, that is, who may be admitted to be heard; and yet, after being heard, may prove not to be credible or such as the jury is bound to believe. For one excellence of the trial by jury is, that the jury are triers of the credit of the witnesses as well as of the truth of the fact. 4 *Blac. Com.* 214. *Phill. Ev.* 19. *6th Edit.*

The party grieved is so much considered as a witness of necessity in this, as in other personal injuries, that if one assist another man to ravish his own wife, she is admissible as a witness against him. *Lord Audley's case*, 3 *Howell's St. Tr.* 419. *cited in* 1 *East's P. C.* 444.

General caution.

" It is true," says Lord *Hale*, " that rape is a most detestable crime, and therefore ought severely and impartially to be punished with death: but it must be remembered, it is an accusation easily to be made, and hard to be proved, and harder to be defended by the party accused, though never so innocent." He then mentions two remarkable cases of malicious prosecution for this crime, that had come within his knowledge; and concludes, " I mention these instances that we may be more cautious upon trials of offences of this nature, wherein the court and jury may, with so much ease, be imposed upon without great care and vigilance; the heinousness of the offence many times transporting the judge and jury

with so much indignation, that they are over-hastily carried to the conviction of the person accused thereof, by the confident testimony, sometimes of malicious and false witnesses." 1 *Hale*, 635, 636. 4 *Blac. Com.* 214.

§ III. Punishment of Rape.

Of old time rape was felony, for which the offender was to suffer death: afterwards the offence was made less, and the punishment changed from death to the loss of those members whereby they offended; that is to say, it was changed to castration and loss of his eyes, unless she that was ravished before judgment demanded him for her husband. 2 *Inst.* 180. Felony without benefit of clergy.

Then by stat. 3 *Ed.* 1. *c.* 13. It was made a trespass, subjecting the offender to two years' imprisonment and a fine at the king's will; and it was again made felony by stat. 13 *Ed.* 1. *c.* 34.; and at last by stat. 18 *El. c.* 7. was excluded from the benefit of the clergy.

And by stat. 13 *R.* 2. *st.* 2. *c.* 1. No charter of pardon shall be allowed for rape, unless the rape be specified therein. Pardon.

§ IV. Principal and Accessary.

Mr. *Hawkins* says, all who are present and actually assist a man to commit a rape, may be indicted as principal offenders, whether they be men or women. 1 *Haw. c.* 41. § 6. Persons present and aiding are principals.

So one woman may be a principal to the ravishment of another.

In *Rex* v. *Burgess and others*, *Chester Spr. Ass.* 1813, upon an indictment, charging three persons jointly with the commission of a rape, an objection was taken that three persons could not be guilty of the same joint act; but it was over-ruled, upon the ground that the legal construction of the averment was only that they had done such acts as subjected them to be punished as principals in the offence. The execution was, however, respited, probably with a view to enable the learned judges to consult other authorities on the accuracy of their opinion: but the prisoners were afterwards executed. 5 *Ev. Col. Stat. Cl.* 6. *p.* 244. *note* (17.) *second edition, and see* 1 *Russ.* 801.

And Ld. *Hale* says, that by stat. 18 *El. c.* 7. the principals in rape are ousted of clergy, whether they be principals in the first degree, to wit, he that committed the fact; or principals in the second degree, to wit, present, aiding, and abetting; but accessaries, before and after, have their clergy. 1 *Hale*, 633. Not present, accessaries.

Warrant for a Rape.

County of ——— } To the constable of ———, and to all other constables and peace-officers in and for the said county of ———.

FORASMUCH as A. S. *of* ———, *in the said county, single woman, hath this day made information and complaint upon oath before me,* G. C., *esquire, one of His Majesty's justices of the peace in and for the said county, that* A. R. *of* ———, *in the said county, labourer, on the* ——— *day of* ——— *instant, at*

——— *in the said county, did violently and feloniously make an assault upon her, the said* A. S., *and her, the said* A. S., *then and there, violently and against her will, did ravish and carnally know. These are therefore to command you, in His Majesty's name forthwith to apprehend and bring before me, or some other of His Majesty's justices of the peace in and for the said county, the body of the said* A. R. *to answer unto the said complaint, and to be further dealt with according to law. Herein fail you not. Given under my hand and seal the* ——— *day of* ——— *in the year of our Lord* 182—.

Indictment for a Rape.

County of ——— } THE *jurors for our lord the king upon their oath present, that* A. O., *late of* ———, *in the county of* ———, *yeoman, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the* ——— *day of* ———, *year of the reign of* ———, *with force and arms, at* ———, *in the county aforesaid, in and upon one* A. I., *spinster, in the peace of God and of our said lord the king, then and there being, violently and feloniously did make an assault, and her the said* A. I. *against the will of her the said* A. I. *then and there feloniously did ravish and carnally know; against the peace of our said lord the king, and against the form of the statute in such case made and provided.*

Receipts (Stamp Duty on). See **Stamps**.

Recognisance.

[3 H. 7. c. 1. — 1 & 2 P. & M. c. 13. — 4 G. 3. c. 10.]

See Vol. II. *tit.* **Fines and forfeited Recognisances.**

What it is.

RECOGNISANCE is a bond of record, testifying the recognisor to owe a certain sum of money to some other; and the acknowledging of the same is to remain of record; and none can take it but only a judge or officer of record. *Dalt. c.* 186. 2 *Blac. Com.* 341.

In what cases it may be taken.

These recognisances, in some cases, the justices of the peace are enabled to take by the express words of certain statutes; but in other cases (as for the peace and good behaviour, and the like,) it is rather in congruity, and by reasonable intendment of law, than by any express authority given them, either by their commission, or by the statute law. *Crom.* 125. *Dalt. c.* 168.

Justices may require sureties of the peace for a limited period.

It is now settled that a justice of the peace is authorised to require surety of the peace for a limited time, (*e. g.* two years,) according to his discretion, and that he need not bind the party over to the next sessions only. In this case *Abbott* C. J. in delivering the judgment of the court, said, " The power of the justices assembled at their sessions to take surety for the peace, is derived from their commission, and is found in the first clause, or *assignavimus*, of the commission, and by that clause the power is given

to any one justice, and not to two or more, as is done by the second clause, which relates to the taking and trial of indictments, and some other matters; and therefore if a single justice cannot take security for a longer period than until the next sessions, it would be difficult to shew that a number of justices assembled at sessions may take it for a longer time; and unless they can do so, then, as it may be in most cases expedient that the period of surety should be longer than the interval between sessions and sessions, both parties, or at least the party required to give the surety, and his mainpernors, must be harassed by repeated attendances, to accomplish an object which may be as well effected by a single attendance, at which the whole matter may be heard and discussed. It may, in some cases, be expedient, that the time and amount of the security, should be settled by the concurrent sentiments of several persons, rather than by the single opinion of one individual; and, therefore, we would be by no means understood to disapprove of the usual practice, which is, to take the surety until the next sessions only. On the other hand, expence and trouble are saved by an adjustment of the whole matter in the first instance; and therefore there may be other cases in which this may be the most convenient course." *Willes* v. *Bridger*, 2 *B. & A.* 278.

Wheresoever any statute giveth them power to take a bond of any man, or to bind over any man to appear at the assizes or sessions, or to take sureties for any matter or cause, they may take a recognisance. Yea, wheresoever they have authority given them to cause a man to do a thing, there it seemeth they have in congruity power given them to bind the party by recognisance to do it; and if the party shall refuse to be bound, the justice may send him to gaol. *Dalt. c.* 168.

But he can take no recognisance but only of such matters as concern his office: and if he doth, it seemeth to be void. *Dalt. c.* 168.

The *King* v. *Hooper & others*, 1 *Chitt. Rep.* 491. A bill of indictment having been found at the quarter sessions for a conspiracy against the defendants, one of whom was an attorney, the latter persuaded the magistrates before whom he was taken upon a warrant, to take his own recognisance in the sum of 5*l.* and that of his clerk, a minor, in the like sum, to appear to take his trial upon the indictment, which had been since removed into the court of *K. B.* by *certiorari*. On a former day a rule was obtained, calling upon the defendant to shew cause why the recognisance and surety so accepted, should not be discharged, and why he should not enter into more effectual securities adapted to the nature of the offence with which he was charged. Counsel being heard on both sides, the court said, that under the circumstances stated upon affidavit, this was an application which might be sustained at the discretion of the court. In taking recognisances, magistrates ought to be left to the exercise of their discretion, without being subjected to the influence of a defendant, however respectable his character and station in life may be. In the present case, the defendant had interfered with the discretion of the magistrates in a manner not to be justified; and as the sureties given appeared not to be sufficient, considering the nature of the

Where a defendant indicted at the quarter sessions for a conspiracy had entered into insufficient recognisances to take his trial; Held, that K. B. on a removal by certiorari, might discharge them on motion, and compel him to enter into better securities.

crime, the rule prayed for ought to be made aboslute. — Rule absolute. See also 1 *Chitt. Crim. L.* 383. *to* 386.

The form of it. Every obligation and recognisance, taken by justices of the peace, must be made to *our lord the king:* on pain of imprisonment of any person that shall take it otherwise. *Dalt. c.* 168.

It must also contain the name, place of abode, and trade or calling, both of principal and sureties, and the sums in which they are bound. *Barl. Recog.* p. 454.

Condition. And it is most commonly subject to a *condition,* which is either indorsed or underwritten, or contained within the body of it upon the performance of which the recognisance shall be void. *Barl. Recog.* p. 454.

Manner of taking it. When the parties are to enter into recognisance, call them by their names thus; " *You* A. B. *acknowledge to owe to our sovereign lord the king the sum of* ———, *and you* C. D. *acknowledge to owe to our sovereign lord the king the sum of* ———; *to be levied of your respective goods and chattels, lands and tenements, for the use of our said lord the king, his heirs and successors, if default shall be made in the condition following; that is to say, if you the said* A. B. *shall make default in appearing,*" *&c. But the parties need not to sign it.* Barl. Recog. *p.* 454.

And it is usual for the justices to mark at the foot of the examination, *A. B.* in 40*l.* to appear, &c. And from such short note make out a record afterwards. *Barl. Recog.* p. 454.

Is a matter of record presently. Yet the recognisance is a matter of record presently so soon as it is taken and acknowledged, although it be not made up. *Dalt. c.* 168.

Whether it need be on parchment. Ld. *Coke* (1 *Inst.* 260.) says that a record is a memorial or remembrance in rolls of *parchment,* &c. From whence it seemeth that a recognisance ought to be ingrossed on parchment, perhaps, for this reason, because parchment is more durable than paper: but since there is no law which prohibits it to be ingrossed on paper, it seemeth that if it shall be on paper only, and not on parchment, it is good in law.

To be subscribed. And when it is made up, if the justice shall only subscribe his name without his seal to it, this is well enough; and that may be in either of these sorts, *acknowledged before me,* J. P., or only to subscribe his name thus; *J. P. Dalt. c.* 176.

3 H. 7. c. 1. How to be certified. By stat. 3 *H.* 7. *c.* 1. The justices shall certify their recognisances for keeping the peace to the next sessions, that the party may be called; and if he make default the default shall be recorded, and the recognisance, with the record of the default, shall be sent and certified into the chancery, king's bench, or exchequer.

1 & 2 P. & M. c. 13. But by stat. 1 & 2 *P. & M. c.* 13. In cases of felony, the recognisances are to be certified to the general gaol delivery.

How discharged. *Reg.* v. *Drummond,* 11 *Mod.* 200. Ld. *Drummond* stood bound by recognisance to appear in the court of king's bench the first day of the term; and Sir *Simon Harcourt,* excusing his non-appearance by reason of sickness, moved that his recognisance might be discharged, the attorney-general having orders, and being in court, consenting thereto. But *Holt* C. J. said notwithstanding such consent, Lord *Drummond* not appearing in person, the Court could not discharge the recognisance, but said, they could respite it till the next term; which was done accordingly.

R. v. *Ridpath*, 10 *Mod.* 152. *Fort.* 358. *Ridpath* entered into a recognisance with sureties to appear the first day of the term to answer (generally), and in the mean time to be of the good behaviour, and not to depart without leave of the court. An information was preferred against him by the attorney-general; who, for some defect in the pleading, entered a *noli prosequi*, and then exhibited a new information. The court was of opinion that the recognisance extended to all crimes whatsoever that he should be charged with; and that if it should have relation to any particular crime only, it must be mentioned in the recognisance, which in this case is only *to answer* generally; that the inconvenience is not so great as is pretended, the bail in this case being bound in a sum certain, and not to stand in the place of the principal, as in civil cases; and that the *noli prosequi* is neither a bar nor discharge.

Estreating recognisances.

R. v. *Tomb*, 10 *Mod.* 278. If a recognisance be estreated in the exchequer, because not punctually complied with, yet if the party appear and take his trial next session, he may compound for a very small matter in the court of exchequer; because the effect, though not the exact form of the recognisance, is complied with. The judges of oyer and terminer are the proper judges whether recognisances ought to be estreated or spared; and it is for the advantage of public justice that they should have such power, if upon the circumstances of the case they see fit.

And by parity of reason, it should seem that the justices of the peace in the quarter sessions should have the like power in respect of offences cognizable there.

Rex v. *Clark*. *Same* v. *Same*. *E.* 3 *G.*4. 5 *B.* & *A.* 728. *Bingham* moved for a rule, calling upon the officer of the crown-office, who had estreated the defendant's recognisances in these cases, to shew cause why the estreat should not be set aside for irregularity, and why he should not pay the cost occasioned thereby. It appeared that the defendant was taken up under a judge's warrant, issued against him upon an indictment found by the grand jury in this court in *Easter* term last, for publishing a blasphemous libel, and that he, on the 8th of *June* last, entered into the usual recognisance, himself in 80*l.* and two sureties in 40*l.* each, to appear and plead within the first eight days of the then next *Trinity* term, and to try the cause, at the *Middlesex* sittings after that term, and personally to appear upon the return of the *postea*, if convicted, and, in the meantime, to be of good behaviour. To this indictment he pleaded not guilty on the 23d of *June*. On the 29th of *June*, another indictment having been found against him by the grand jury in this court for a subsequent publication of the same libel, he pleaded not guilty thereto; and on the 30th *June*, entered into a second recognisance, himself in 80*l.* with one surety in 80*l.* for peremptorily proceeding to the trial of that indictment at the *Middlesex* sittings after *Trinity* term, and, in the meantime, for being of good behaviour. The defendant did not give notices of trial, or make up the records in either of these prosecutions, either after *Trinity* or *Michaelmas* terms, nor did he obtain any rules for respiting the estreating of the recognisances. The prosecutors, however, gave notices of trial after *Trinity* term; but there being no sittings at *Westminster*, the causes were not tried. In *Michaelmas* term they gave notices again, and made up the

Defendant being taken up on the 8th of *June*, upon an indictment for a libel, entered into a recognisance to appear and plead, within the first eight days of *Trinity* term, and to try the cause at the sittings after that term. The defendant pleaded not guilty, but did not give notices of trial or make up the record, either for the sittings after *Trinity* or *Michaelmas* term, nor were the recognisances respited. The prosecutors gave notice of trial after *Trinity* and *Michaelmas* term,

Rex. v. Clark.

but the causes were not tried. The defendant was ready and willing to take his trial on both these occasions. The recognisances were estreated in *Hilary* term, without any notice to the defendant, or any motion by the prosecutor: Held, that this estreat was regular.

records for trial. The causes, after having been appointed for trial, were in consequence of the pressure of business, made remanets to the sittings after *H. T.*, upon the prosecutors' records. In *H. T.* the recognisances were estreated, (without any notice to the defendant, or any motion for that purpose made by the prosecutors,) in consequence of the defendant's default, in not giving notices and making up the records, either in *Trinity* or *Michaelmas* terms last. It was contended, on the part of the defendant, that the estreat was irregular, inasmuch as the records having been actually taken down for trial by the prosecutors, no default had been made by the defendant, who was ready and willing to be tried there. And, besides, in this case, the defendant had no notice of his default. *Per Curiam.*—It was the defendant's duty, in pursuance of his recognisances, to be prepared according to the practice of the court, to try at the sittings after *Trinity* or *Michaelmas* terms, and he was not so prepared, for he neither gave notice to the prosecutors, nor made up the records, on either occasion, and the prosecutors having done so is immaterial to the question. There was no necessity to give any notice to him that his recognisances would be estreated; for he was bound to take notice of the terms of his own recognisances. The rule must, therefore, be refused, the estreat being quite regular, and conformable to the ordinary practice of the Court. R. R.

4 G. 3. c. 10. Barons of the exchequer impowered to discharge, upon affidavit and petition, recognisances estreated.

In case recognisances shall be estreated, where the offence is not attended with aggravated circumstances, it is enacted by stat. 4 *G.* 3. *c.* 10. as follows: Whereas many recognisances have been estreated into the exchequer against persons for not appearing as parties or witnesses in the courts of record at *Westminster*, or at the assizes, and general quarter sessions, or other courts of record, for not prosecuting indictments there, or otherwise not performing the conditions of such recognisances, many of which neglects of duty have happened by the inattention of ignorant people, some of whom are imprisoned, and others liable to be so, by the process constantly issued against them out of the court of exchequer, though no other prosecution be subsisting, but merely for such forfeitures of their recognisance, for which there are no easy means at present for poor persons especially to procure any discharge; for remedy thereof, it shall be lawful for the barons of the exchequer, on affidavit and petition by and on the behalf of the person imprisoned or liable to be imprisoned, on the forfeiture of such recognisance, to discharge such person by order without any *quietus* to be sued out for that purpose; for which order, no more shall be taken than one pound and one shilling. Provided that no discharge shall be given on such petition, where any debt is due to the crown, other than by the recognisance so prayed to be discharged; nor in any cases of defrauding the revenue by contraband trade, or assaulting the officers of the customs or excise in the execution of their duty, or any person lawfully assisting them therein.

It is incumbent upon persons under recognisance, who in consequence either of bills not having been found, or of none having been preferred, may not be called upon to answer or give evidence, to see that their appearance is recorded, so that their recognisances may be discharged. *Vide* 4 *Chitt. Crim. Law*, 489.

The *conditions* of recognisances in all the variety of cases are interspersed under their proper titles.

Recognisance with Sureties.

County of } *BE it remembered, that on the* ——— *day of* ——— ——— } *in the* ——— *year of the reign of our lord* George *the fourth, of the united kingdom of* Great Britain *and* Ireland, *king, defender of the faith,* A. O. *of* ———, *in the county aforesaid, yeoman, and* A. S. *of* ——— *in the county aforesaid, taylor, and* B. S. *of* ——— *in the county aforesaid, labourer, personally came before me,* J. P. *esquire, one of the justices of our said lord the king, assigned to keep the peace in the said county, and acknowledged themselves to owe to our said lord the king; that is to say, the said* A. O. *the sum of* 20*l. and the said* A. S. *and* B. S. *each the sum of* 10*l. separately, and of good and lawful money of* Great Britain, *to be made and levied of their goods and chattels, lands and tenements respectively, to the use of our said lord the king, his heirs and successors, if the said* A. O. *shall make default in the condition herein indorsed* [or, *hereunder written*].

Acknowledged before me,

J. P.

Recognisance without Sureties.

County of } *BE it remembered, that on the* ——— *day of* ——— ——— } *in the* ——— *year of the reign of our lord* George *the fourth, of the united kingdom of* Great Britain *and* Ireland, *king, defender of the faith,* A. O. *of* ——— *in the said county, yeoman, personally came before me,* J. P. *esquire, one of the justices of our said lord the king, assigned to keep the peace of the said county, and acknowledged himself to owe to our said lord the king,* 10*l. of good and lawful money of* Great Britain, *to be made and levied of his goods and chattels, lands and tenements, to the use of our said lord the king, his heirs and successors, if he the said* A. O. *shall fail in the condition under written* [or *indorsed*].

J. P.

The condition of the above-written [or, *within-written*] *recognisance is such, that if the above-bound* A. O. *shall* ——— *Then the said recognisance to be void, or else remain in its force.*

Recusant. See **Popery**, and **Public Worship**.

Regrating. See **Forestalling**.

Rent. See **Distress**.

Rescue.

[1 & 2 G. 4. c. 88.]

What a rescous is.

RESCOUS is an ancient *French* word, coming from *rescourer,* that is, *recuperare,* to recover; and signifies a forcible setting at liberty against law a person arrested by the process or course of law. 1 *Inst.* 160.

It seems that it is necessary that the rescuer should have knowledge that the person is under arrest for a criminal offence, if he be in the custody of a private person: but if he be in the custody of an officer, there at his peril he is to take notice of it. 2 *Hale,* 606.

But it is said that to rescue a felon taken on a general warrant, to answer what shall be objected against him, no cause being expressed in the warrant, is not felony. 1 *Hale,* 578.

Nor unless a felony hath been really done. *Hale's Sum.* 116.

When it shall be tried.

Although a *prison breaker* may be arraigned for that offence, before he be arraigned of the crime for which he was imprisoned, yet he who *rescues* one imprisoned for felony cannot, according to the better opinion, be arraigned for such offence, as for a felony, till the principal offender be attainted; but he may be immediately proceeded against for a misprision, if the king pleases. 2 *Haw. c.* 21. § 7.

Therefore, if the principal die before the attainder, he shall be fined and imprisoned. *Hale's Sum.* 116.

Also, if the principal be found not guilty, or guilty of a crime not capital, the rescuer ought to be discharged of felony: but he may be fined for the misdemeanor. 1 *Hale,* 598, 599.

Indictment.

An indictment of *rescous* must set forth the nature and cause of the imprisonment, and the special circumstances of the fact in question. 2 *Haw. c.* 21. § 5.

Upon an indictment at *Exeter* Summer Assizes, 1795, for an assault and rescue, it appeared that the sheriff's officers having apprehended a man by virtue of a writ against him, a mob collected and endeavoured by violence to rescue the prisoner. In the course of the scuffle, which was at ten o'clock at night, one of the bailiffs having been violently assaulted struck one of the assailants, a woman, and, as it was thought for some time, had killed her; whereupon and before her recovery was ascertained the constable was sent for and charged with the custody of the bailiff who had struck the woman. The bailiffs on the other hand gave the constable notice of their authority, and represented the violence which had been previously offered to them; notwithstanding which, he proceeded to take them into custody upon the charge of murder, and at first offered to take care also of their prisoner, who however was soon rescued by the surrounding mob: and the woman having recovered, the bailiffs were released by the constable the next morning. *Heath* J. was clearly of opinion that the constable and his assistant were guilty of the assault and rescue, and directed the jury accordingly; who however acquitted the defendants. 1 *East's P. C.* 305.

A hindrance of a person to be arrested, that has committed felony, is a misdemeanor, but no felony: but if the party be arrested, and then rescued, if the arrest were for felony, the rescuer is a felon; if for treason, a traitor; if for trespass, fineable. *Hale's Sum.* 116. 2 *Haw. c.* 21. § 7. Punishment.

By stat. 1 & 2 *G.* 4. *c.* 88. intituled "*An act for the amendment of the law of rescue,*" § 1. after reciting that "whereas divers daring attempts have of late been made to effect the rescue or prevent the detention of persons charged with or committed for or on suspicion of felony: And whereas it might tend more effectually to prevent the commission of such offences if further provisions were made for the punishment of persons who may hereafter be convicted thereof, as are hereinafter enacted:" It is therefore enacted, that "if any person shall rescue, or aid and assist in rescuing, from the lawful custody of any constable, officer, headborough, or other person whomsoever, any person charged with, or suspected of, or committed for any felony, or on suspicion thereof, then if the person or persons so offending shall be convicted of felony, and be entitled to the benefit of clergy, and be liable to be imprisoned for any term not exceeding one year, it shall be lawful for the court by or before whom any such person or persons shall be convicted, to order and direct, in case it shall think fit, that such person or persons, instead of being so fined and imprisoned as aforesaid (*a*), shall be transported beyond the seas for seven years, or be imprisoned only, or be imprisoned and kept to hard labour in the common gaol, house of correction, or penitentiary house, for any term not less than one and not exceeding three years. 1 & 2 G. 4. c. 88. Punishment of persons rescuing persons charged with felony. (*a*) *Sic.*

§ 2. Enacts, that if any person shall assault, beat, or wound any constable, officer, headborough, or other person whomsever, with intent in so doing, or by means thereof, to obstruct, resist, or prevent the lawful apprehension or detainer of any person charged with or suspected of felony; or if any person charged with or suspected of felony, shall assault, beat, or wound any constable, officer, headborough, or other person whomsoever, with intent in so doing, or by means thereof, to obstruct, resist, or prevent his or her apprehension or detainer; then and in every or any such case, if the person or persons so offending shall be convicted of a misdemeanor only, it shall be lawful for the court by or before whom any such person or persons shall be so convicted as aforesaid to order and direct, in case it shall think fit, that such person or persons shall, in addition to any other pains, penalties, or punishment to which he, she, or they are now subject or liable, be kept to hard labour for any term not exceeding two years, and not less than six months. Punishment of persons assaulting constables to prevent the apprehension or detainer of persons charged with felony.

There are also special penalties enacted for rescuing offenders against particular statutes, which belong not to this general title.

Although the felony for which a man is arrested, be not within clergy, yet the rescuing him is within clergy. 1 *Hale,* 599. 607. Clergy.

Upon the return of a *rescous,* process of outlawry shall issue. 2 *Haw. c.* 27. § 113. Outlawry.

Indictment for a Rescue.

THE jurors for our lord the king upon their oath present, that on the ——— day of ———, in the ——— year of the reign of ———, J. P. *esquire, one of the justices of our said lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, did make, direct, and deliver a warrant or precept in writing, to* A. C. *of ———, in the said county, yeoman, constable of the town of ——— aforesaid, in the county aforesaid, by which said warrant he the said* A. C. *the constable aforesaid, was commanded to take the body of* A. O. *late of ———, yeoman, and bring and have him the said* A. O. *before the said* J. P. *to be examined by him the said* J. P. *concerning an assault said to have been committed by him the said* A. O. *upon* A. I. *of ———, yeoman; which said* A. C. *the constable aforesaid, afterwards, that is to say, on the ——— day of ———, in the year aforesaid, at ——— aforesaid, in the county aforesaid, by virtue of the said warrant, did take and arrest him the said* A. O. *for the cause aforesaid, and him the said* A. O. *in his custody, by virtue of the said warrant, then and there had; and that the said* A. O. *late of ——— aforesaid, in the county aforesaid, yeoman, and* B. O. *late of the same, yeoman, well knowing the said* A. O. *so to be arrested as aforesaid, afterwards, to wit, on the said ——— day of ———, in the year aforesaid, at ——— aforesaid, in the county aforesaid, with force and arms, in and upon the said* A. C. *the constable aforesaid, then and there being in the peace of God and of our lord the king, and in the execution of his said office then and there being, did make an assault, and him the said* A. C. *then and there did beat, wound, and ill-treat, and that the said* B. O. *him the said* A. O. *out of the custody of the said* A. C. *and against the will of the said* A. C. *then and there, with force and arms, unlawfully did rescue and put at large to go where he would; and that the said* A. O. *himself, out of the custody of the said* A. C. *and against the will of the said* A. C. *then and there, with force and arms, unlawfully did rescue, and escape at large, to go where he would; in contempt of our said lord the king and his laws, to the great damage of the said* A. C.*, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.*

Restitution of Stolen Goods.

[21 H. 8. c. 11.—31 El. c. 12.]

THE means of restitution of goods for the party from whom they were stolen, (since the abolition of appeals by stat. 59 *G.* 3. *c.* 46. *vide* Vol. I. p. 113.) appear to be two. 1. By stat. 21 *H.* 8. *c.* 11. And, 2. By the course of the common law. 1 *Hale,* 538.

Restitution by stat. 21 H. 8.

1. By stat. 21 *H.* 8. *c.* 11. Which statute introduced a new law for restitution; for before this statute there was no restitution

upon an indictment, but only upon an appeal; which said statute enacteth as follows: 21 H.8. c.11.

If any felon do rob or take away any man's money or goods, and thereof be indicted and arraigned, and found guilty or otherwise attainted, by reason of evidence given by the party robbed, or owner of the money or goods, or by any other by their procurement; then the party robbed, the owner of the goods, shall be restored to such his money or goods; and as well the justices of gaol delivery, as other justices before whom the felon shall be found guilty, or otherwise attainted, may award a writ of restitution, in like manner as if the felon were attainted on appeal.

Or otherwise attainted.] If the owner prefer a bill of indictment, which is found, and the felon flies, and is outlawed, the owner shall have restitution; for he gave evidence upon the indictment, which, though it be not a conviction, is the ground of the outlawry, which is an attainder. 1 *Hale*, 545.

The party robbed or owner.] Therefore if the servant be robbed of the master's money, or his servant, by his procurement, give evidence and convict the felon, the master shall have a writ of restitution, if it appear upon the indictment and evidence that it was the master's money; for the statute gives restitution to the party robbed, or owner. 1 *Hale*, 542.

Or owner.] If the testator be robbed, and the thief be convict upon the procurement of the executor, such executor shall have restitution; for this being a beneficial law ought to be construed beneficially, so as to extend to executors and administrators. 3 *Inst.* 342.

Shall be restored.] If goods be stolen, and not waived in flight, nor seized by the king's officers or lord of the manor, nor sold in open market, the owner may take them again without any writ of restitution, or may bring his action for them; and this, although he doth not prosecute the offender. 2 *Haw. c.* 23. § 49. *Kel.* 48.

Restitution by 31 El. c. 12.

And by stat. 31 *El. c.* 12. Where horses are stolen, and sold in open market, and the owner claims them again within six months, and pays the buyer as much as they cost him, he shall have them again without prosecution.

But otherwise if the goods be waived, by the felon in his flight, or in case they be not waived, yet if they be seized by the king's officers, or lord of the manor, as suspecting them to be stolen; there the party shall not have restitution, unless the felon be convicted at his prosecution. 2 *Haw. c.* 23. § 49. *Kel.* 48.

And in such case, he shall have no more than what is mentioned in the indictment, though other goods were stolen at the same time; and the reason is, because by such omission the offender might have escaped. *Kel.* 49. 1 *Hale*, 545.

To such his money or goods.] A man stole cattle, and sold them in open market; the sheriff seized the thief and the money, and he was convicted and hanged at the prosecution of the owner of the cattle, and he had restitution of the money; for though the statute gives power to the justices to award restitution of the *money or goods stolen*, and though the money in this case was not stolen, yet because it did arise by stealing, it shall be within the equity, though not in the very words of the statute. *Noy*, 128.

But it hath been a great question, if goods be stolen and by the thief sold in the market overt, whether the thief being con-

victed upon the evidence of the party robbed, he shall have restitution upon this statute of the thing sold or not, the buyer not being privy to the felony: but Ld. *Hale* argues strongly, that he shall have restitution, notwithstanding the sale in market overt of the goods stolen. 1. Because this act was made to encourage persons robbed to pursue malefactors, and therefore they have an assurance of restitution; and it would be small encouragement if a thief by a sale in a market overt, which is every day almost in every shop in *London,* should elude it. 2. Because the man that is robbed is robbed against his will, and cannot help it; but the buyer of stolen goods may chuse whether he will buy, or if he buy, may yet refuse to buy unless well secured of the property of the goods, or knowing the owner. 1 *Hale,* 542, 543, 544. 2 *Haw. c.* 23. § 55. *Kel.* 48.

But the owner of goods stolen, prosecuting the felon to conviction, cannot recover their value in trover from a person who purchased them in market overt and sold them again before conviction; notwithstanding that the owner gave him notice of the robbery while they were in his possession. Indeed, if he could maintain such action, he might recover with equal propriety against any one of the various persons through whose hands the goods might have passed in the intermediate time between the felony and conviction; during which period the property remains *in dubio,* liable to be defeated by the attainder. The plaintiff, however, has a right to restitution, and perhaps would be entitled to recover damages in trover against any person who was fixed with the goods after conviction, and refused to deliver them; for then the goods would be converted to the prejudice of the owner. *Horwood* v. *Smith,* 2 *T. R.* 750.

In like manner as if the felon were attainted on appeal.] And yet upon this statute, if the offender be convict upon the evidence of the party robbed, or owner, he shall have restitution, though there were no fresh suit, or any enquiry by inquest touching the same. 1 *Hale,* 545.

Yet if it shall appear to the court that the party hath been guilty of a gross neglect in prosecuting, it seemeth that in such case he shall not be entitled to restitution. 2 *Haw. c.* 23. § 56.

And where goods have been obtained from another by mere fraud, the court have no power to award restitution on conviction of the offender, as in cases of felony. 2 *East's P. C.* 839. 5 *T. R.* 175. *Rex* v. *De Veaux and others,* 2 *Leach,* 585.

Restitution by the common law.

By course of the common law.] If the owner take his goods again of the offender, to the intent to favour him, or maintain him, this is unlawful, and punishable by fine and imprisonment; but if he take them again without any such intent, it is no offence. 1 *Hale,* 546.

But after the felon is convicted, it can be no colour of crime to take his goods again, where he finds them; because he hath pursued the law upon him, and may have his writ of restitution, if he pleases. 1 *Hale,* 546.

Riot, Rout, and unlawful Assembly—Training to Arms, &c.

§ I. What is a Riot, Rout, or unlawful Assembly.

WHEN three persons or more shall assemble themselves together, with an intent mutually to assist one another against any who shall oppose them, in the execution of some enterprise of a private nature, with force or violence, against the peace, or to the manifest terror of the people, whether the act intended were of itself lawful or unlawful; if they only meet to such a purpose or intent, although they shall after depart of their own accord, without doing any thing, this is an *unlawful assembly.* What is an unlawful assembly.

If after their first meeting they shall move forward towards the execution of any such act, whether they put their intended purpose in execution or not, this, according to the general opinion, is a *rout:* What a rout.

And if they execute such a thing indeed, then it is a *riot.* (A.) 1 *Haw. c.* 65. § 1. *Dalt. c.* 136. *p.* 310, 311. What a riot. A.

Three persons or more.] And therefore if the jury do acquit all but two, and find them guilty, the verdict is void, unless they be indicted *together with other rioters unknown,* because it finds them guilty of an offence, whereof it is impossible that they should be guilty; for there can be no riot where there are no more persons than two. 2 *Haw. c.* 47. § 8.

Rex v. *Scott and Hans,* 3 *Burr.* 1262. Six persons were indicted; whereof two died before trial, two were acquitted, and two convicted. It was moved in arrest of judgment, for that two only could not be found guilty of a riot, unless they were indicted *together with other persons unknown;* which was not the case here; for it doth not appear that any others were guilty besides these two; here is no finding as to the two dead persons.—By

Rex v. Scott and Hans. Ld. *Mansfield.* Six were indicted. Two of them are acquitted. Two are dead untried. The jury have found the other two guilty of a riot; consequently it must have been with one or both of those who have not been tried; as it could not otherwise have been a riot.

Women. Infants. Women are punishable as rioters; but infants, under the age of discretion, are not persons within the aforesaid description, punishable as rioters. 1 *Haw. c.* 65. § 14.

Note: in 1 *Haw. p.* 156, 157, 158. (folio edition,) the words *more than three persons* are three times over inserted instead of *three persons or more;* which is only remarked as an instance, that, in a variety of matter, it is impossible for the mind of man to be always equally attentive. See 1 *Russ.* 350.

Assemble themselves together.] It seems agreed that if a number of persons being met together at a fair, or market, or church aisle, or on any other lawful and innocent occasion, happen on a sudden quarrel to fall together by the ears, they are not guilty of a riot, but of a sudden affray only, of which none are guilty but those who actually engage in it; because the design of their meeting was innocent and lawful, and the subsequent breach of the peace happened unexpectedly, without any previous intention concerning it. Yet it is said, that if persons innocently assembled together, do afterwards, upon a dispute happening to arise among them, form themselves into parties with promises of mutual assistance, and then make an affray, they are guilty of a riot; because upon their confederating together with an intention to break the peace, they may as properly be said to be assembled together for that purpose from the time of such confederacy, as if their first coming together had been on such a design. 1 *Haw. c.* 65. § 3.

An assembly of a man's friends for the defence of his person against those who threaten to beat him, if he go to such a market, &c. is unlawful; for he who is in fear of such insults, must provide for his safety by demanding the surety of the peace against the persons by whom he is threatened, and not make use of such violent methods, which cannot but be attended with the danger of raising tumults and disorders to the disturbance of the public peace. But an assembly of a man's friends at his own house, for the defence of the possession of it against such as threaten to make an unlawful entry, or for the defence of his person against such as threaten to beat him in his house, is indulged by law; for a man's house is looked upon as his castle. He is not, however, to arm himself and assemble his friends in defence of his close. *Per Heath* J. *Rex* v. *the Bishop of Bangor, Shrewsbury Sum. Ass.* 1796. 1 *Russ.* 362. and see the authorities there cited.

And the law is, that if any person encourages, or promotes, or takes part in riots, whether by words, signs, or gestures, or by wearing the badge or ensign of the rioters, he is himself to be considered a rioter; for in this case all are principals. *Per Mansfield* C. J. in *Clifford* v. *Brandon,* 2 *Campb.* 370.

In the execution of some enterprize of a private nature.] It also seems agreed that the injury or grievance complained of and intended to be revenged or remedied by such an assembly must relate to some private quarrel only; as the inclosing of lands, in which the inhabitants of a town claim a right of common, or

gaining the possession of tenements the title whereof is in dispute, or such like matters relating to the interest or disputes of particular persons, and no way concerning the public; for wherever the intention of such an assembly is to redress public grievances, as to pull down inclosures in general, or reform religion, and the like, it is high treason. 1 *Haw. c.* 65. § 6.

Against the peace, or to the terror of the people.] It seems to be clearly agreed that in every riot there must be some such circumstances, either of actual force or violence, or at least of an apparent tendency thereto, as are naturally apt to strike a terror into the people, as the shew of armour, threatening speeches, or turbulent gestures; for every such offence must be laid to be done *in terrorem populi.* And from hence it clearly follows that assemblies at wakes, or other festival times, or meetings for exercise of common sports or diversions, as bull-baiting, wrestling, and such like, are not riotous.(*a*) 1 *Haw. c.* 65. § 5.

But it is not necessary in order to constitute this crime that personal violence should have been committed. *Per Mansfield* C. J. in *Clifford* v. *Brandon*, 2 *Campb.* 369.

From the same ground also it seems to follow that it is possible for three persons or more to assemble together with an intention to execute a wrongful act, and also actually to perform their intended enterprise, without being rioters; as if a man assemble a meet company, to carry away a piece of timber or other thing, whereto he pretends a right, that cannot be carried without a great number, if the number be not more than are needful for such purpose, although another man hath better right to the thing so carried away, and that this act be wrong and unlawful, yet it is of itself no riot, except there be withal threatening words used, or other disturbance of the peace. 1 *Haw. c.* 65. § 5. *Lamb.* 178. *Dalt. c.* 137.

Much more may any person, in a peaceable manner, assemble a meet company to do any lawful thing, or to remove or cast down any common nuisance: thus every private man, to whose house or land any nuisance shall be erected, made, or done, may in peaceable manner assemble a meet company, with necessary tools, and may remove, pull, or cast down such nuisance, and that before any prejudice received thereby; and for that purpose, if need be, may also enter into another man's ground. Thus a man erected a wear across a common river, where people have a common passage with their boats, and divers did assemble with spades, crows of iron, and other things necessary to remove the said wear, and make a trench in his land, that did erect the wear, to turn the water, so as they might the better take up the said wear, and they did remove the same nuisance; this was holden neither any forcible entry, nor yet any riot. *Dalt. c.* 137.

But in the cases aforesaid, if in removing any such nuisance the persons so assembled shall use any threatening words, (as to say, they will do it though they die for it, or such like words,) or shall

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(*a*) But see in 2 *Chitt. Crim. L.* 494. an indictment said to have been drawn in the year 1797 by a very eminent pleader, for the purpose of suppressing an ancient custom of kicking about foot-balls on a *Shrove-Tuesday*, at *Kingston-upon Thames.*

use any other behaviour, in apparent disturbance of the peace, then it seemeth to be a riot, and therefore where there is cause to remove any such nuisance, or to do any like act, it is the safest not to assemble any multitude of people, but only to send one or two persons, or if a greater number, yet no more than are needful, and only with meet tools, to remove, pull, or cast down the same, and that such persons tend their business only, without disturbance of the peace, or threatening speeches. *Dalt. c.* 137.

Whether the act intended were of itself lawful or unlawful.] It hath been generally holden that it is no way material, whether the act intended to be done by such an assembly be of itself lawful or unlawful, from whence it follows, that if three or more persons assist a man to make a forcible entry into lands, to which one of them has a good right of entry, or if the like number in a violent and tumultuous manner join together in removing a nuisance, or other thing which may lawfully be done in a peaceable manner, they are as properly rioters as if the act intended to be done by them were never so unlawful. 1 *Haw. c.* 65. § 7. *Dalt. c.* 137.

§ II. How the same may be restrained by a private Person.

By the common law, any private person may lawfully endeavour to suppress a riot, by staying those whom he shall see engaged therein from executing their purpose, and also by stopping others whom he shall see coming to join them. However it seems extremely hazardous for private persons to proceed to these extremities; and such violent methods seem only proper against such riots as savour of rebellion. 1 *Haw. c.* 65. § 11.

In the riots of 1780, however, this matter was much misunderstood, and a general persuasion prevailed that no indifferent person could interpose without the authority of a magistrate; in consequence of which much mischief was done, which might otherwise have been prevented. So there is a great difference between the right of a private person in cases of intended felony and of breach of the peace: it is lawful for a private person to do any thing to prevent the perpetration of a felony. (*a*) *Vide* per *Heath* J. 2 *Bos. & Pull.* 264.

Opinion of Ld. Ellenborough. (*a*) The following opinion as to the power of private persons and of the military to interfere for the suppression of riots, is said to have been given by the late Ld. *Ellenborough* when at the bar: — "In case of any sudden riot or disturbance, *any* of H. M.'s subjects, without the presence of a peace officer of any description, *may arm themselves*, and of course may use any *ordinary means of force* to suppress such riot and disturbance. This was laid down in my Ld. C.J. *Popham's Reports*, 121., and *Kelyng*, 76., as having been resolved by all the Judges, in the 39th of Queen *Eliz.* to be good law: and has certainly been recognised in *Hawkins* and other writers on the crown law, and by various Judges at different periods since. And what H. M.'s subjects *may* do, they also *ought* to do, for the suppression of public tumult, when any exigency may require that such means be resorted to. Whatever *any other class* of H. M.'s subjects may allowably do in this particular, *the military may unquestionably do also*. By the common law, every description of peace officers may and ought to do not only all that in him lies towards the suppression of riots, but may and ought to command *all other persons* to assist therein. However, it is by all means advisable to procure a justice of the peace to attend, and *for the military to act under his immediate orders*, when such attendance and the sanction of such orders can be ob-

§ III. How by a Constable or other Peace Officer.

By the common law, the sheriff, constable, and other peace officers, may and ought to do all that in them lies, towards the suppressing of a riot, and may command all other persons to assist therein. 1 *Haw.* *c.* 65. § 11.

§ IV. How by one Justice.

By stat. 34 *Ed.* 3. *c.* 1. *The justices of the peace shall have power to restrain rioters, and to arrest and chastise them according to their offence; and cause them to be imprisoned and duly punished according to the law and custom of the realm, and according to that which to them shall seem best to do, by their discretions and good advisement.* 34 Ed. 3. c. 1.

And this statute hath been liberally construed for the advancement of justice; for it hath been resolved, that if a justice find persons riotously assembled, he alone, without staying for his companions, hath not only power to arrest the offenders and bind them to their good behaviour, or imprison them if they do not offer good bail; but that he may also authorise others to arrest them by a bare verbal command, without other warrant; and that by force thereof, the person so commanded may pursue and arrest the offenders in his absence as well as presence. Also it is said that after a riot is over, any one justice may send his warrant to arrest any person who was concerned in it, and also that he may send him to gaol till he shall find sureties for his good behaviour. 1 *Haw.* *c.* 65. § 16.

But it seems to be agreed that no one justice hath any power by force of this statute either to record a riot upon his own view, or to take an inquisition thereof after it is over. Also if one justice, proceeding upon this statute, shall arrest an innocent person as a rioter, it seemeth that he is liable to an action of trespass, and that the party arrested may justify the rescuing himself, because no single justice is by this statute made a judge of the said offence. But if a riot shall be committed by persons armed in an unusual manner, contrary to the statute of *Northampton*, 2 *Ed.* 3. *c.* 3. and any one justice acting *ex officio*, in pursuance of the statute, seize the armour, and imprison the offender, and make a record of the whole matter, such a record cannot be traversed, because it is made by one acting in a judicial capacity. And for the same reason, if a justice proceeding on the statute of the 15 *R.* 2. against forcible entries and detainers shall upon his own view record a riot, which shall be committed in the making of any such forcible entry or detainer, a riot so recorded cannot be traversed. Also if a justice acting as a judge by any statute whatsoever empowering him so to do, make a record upon his view of a riot committed in

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tained, as it not only prevents any disposition to unnecessary violence on the part of those who act in repelling the tumult, but it induces, also, from the known authority of such magistrates, a more ready submission, on the part of the rioters, to the measures used for that purpose; but still in cases of *great and sudden emergency, the military as well as all other individuals, may act without their presence*, or without the presence of any other peace officer whatsoever.

"EDWARD LAW, Lincoln's Inn, Feb. 9. 1801."

34 Ed.3. c.1. his presence, such record shall not be traversed; for the law gives such uncontroulable credit to all matters of record made by any judge of record as such, that it will never admit of an averment against the truth thereof. 1 *Haw. c.* 65. § 17.

1 G.1. st.2. c.5. But if the rioters are above the number of twelve, the offence is greatly enhanced, and the power of one justice very much enlarged, by stat. 1 *G.* 1. *st.* 2. *c.* 5. commonly called the Riot Act, and intituled, "*An Act for preventing tumults and riotous assemblies, and for the more speedy and effectual punishing the rioters.*" § 1. after reciting that "Whereas of late many rebellious riots and tumults have been in divers parts of this kingdom, to the disturbance of the public peace, and the endangering of H. M.'s person and government, and the same are yet continued and fomented by persons disaffected to H. M., presuming so to do, for that the punishments provided by the laws now in being are not adequate to such heinous offences; and by such rioters H. M. and his adminstration have been most maliciously and falsely traduced, with an intent to raise divisions, and to alienate the affections of the people from H. M.: therefore for the preventing and suppressing of such riots and tumults, and for the more speedy and effectual punishing the offenders therein;" enacts, "That if any persons, to the number of twelve or more, being unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace, at any time after the last day of *July*, in the year of our Lord 1715, and being required or commanded by any one or more justice or justices of the peace, or by the sheriff of the county, or his under-sheriff, or by the mayor, bailiff or bailiffs, or other head officer, or justice of the peace of any city or town corporate, where such assembly shall be, by proclamation to be made in the king's name, in the form hereinafter directed, to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, shall, to the number of twelve or more (notwithstanding such proclamation made) unlawfully, riotously, and tumultuously remain or continue together by the space of one hour after such command or request made by proclamation, that then such continuing together to the number of twelve or more, after such command or request made by proclamation, shall be adjudged felony without benefit of clergy, and the offenders therein shall be adjudged felons, and shall suffer death as in case of felony without benefit of clergy."

Twelve persons or more unlawfully assembled after the last of July, 1715, and not dispersing after commanded by one justice, &c. by proclamation,

shall be adjudged felons without benefit of clergy.

How the proclamation shall be made.

§ 2. "That the order and form of the proclamation that shall be made by the authority of this act shall be as hereafter followeth; (that is to say,) the justice of the peace, or other person authorised by this act to make the said proclamation, shall, among the said rioters, or as near to them as he can safely come, with a loud voice, command, or cause to be commanded, silence to be while proclamation is making, and after that, shall openly and with loud voice make or cause to be made proclamation in these words, or like in effect: —

The proclamation.

OUR sovereign lord the king chargeth and commandeth all persons, being assembled, immediately to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, upon the pains contained in the act made in the first year of king George, *for preventing tumults and riotous assemblies.*

God save the King.

"And every such justice and justices of the peace, sheriff, under-sheriff, mayor, bailiff, and other head officer aforesaid, within the limits of their respective jurisdictions, are hereby authorised, empowered, and required, on notice or knowledge of any such unlawful, riotous, and tumultuous assembly, to resort to the place where such unlawful, riotous, and tumultuous assembly shall be, of persons to the number of twelve or more, and there to make or cause to be made proclamation in manner aforesaid."

1 G. 1. st. 2. c. 5.

Justices &c. to resort to the place.

§ 3. "And if such persons so unlawfully, riotously, and tumultuously assembled, or twelve or more of them, after proclamation made in manner aforesaid, shall continue together, and not disperse themselves within one hour, that then it shall and may be lawful to and for every justice of the peace, sheriff, or under-sheriff of the county, where such assembly shall be, and also to and for every high or petty constable, and other peace officer within such county, and also to and for every mayor, justice of the peace, sheriff, bailiff, and other head officer, high or petty constable, and other peace officer of any city or town corporate where such assembly shall be, and to and for such other person and persons as shall be commanded to be assisting unto any such justice of the peace, sheriff, or under-sheriff, mayor, bailiff, or other head officer aforesaid, (who are hereby authorised and empowered to command all H. M.'s subjects of age and ability to be assisting to them therein,) to seize and apprehend, and they are hereby required to seize and apprehend such persons so unlawfully, riotously, and tumultuously continuing together after proclamation made, as aforesaid, and forthwith to carry the persons so apprehended before one or more of H. M.'s justices of the peace of the county or place where such person shall be so apprehended, in order to their being proceeded against for such their offences according to law; and if the persons so unlawfully, riotously, and tumultuously assembled, or any of them, shall happen to be killed, maimed, or hurt, in the dispersing, seizing, or apprehending, or endeavouring to disperse, seize, or apprehend them, by reason of their resisting the persons so dispersing, seizing or apprehending, or endeavouring to disperse, seize, or apprehend them, that then every such justice of the peace, sheriff, under-sheriff, mayor, bailiff, head officer, high or petty constable, or other peace officer, and all and singular persons, being aiding or assisting to them, or any of them, shall be free, discharged, and indemnified, as well against the king's majesty, his heirs and successors, as against all and every other person and persons of, for, or concerning the killing, maiming, or hurting of any such person or persons, so unlawfully, riotously, and tumultuously assembled, that shall happen to be so killed, maimed or hurt, as aforesaid."

Persons so assembled, and not dispersing within an hour, to be seized.

And if they make resistance, the persons killing them, &c. to be indemnified.

§ 4. And "if any persons unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace, shall unlawfully, and with force, demolish or pull down, or begin to demolish or pull down, any church or chapel, or any building for religious worship, certified and registered according to the statute made in the first year of the reign of the late king *William* and queen *Mary*, intituled, *An act for exempting their majesties' protestant subjects dissenting from the church of* England *from the penalties of certain laws*, or any dwelling-house, barn, stable, or other out-house, that then every such demolishing or pulling

Pulling down, &c. any church, &c. felony without benefit of clergy.

1 W. & M. sess. 1. c. 18.

1 G. 1. st. 2. c. 5.

down, or beginning to demolish or pull down, shall be adjudged felony without benefit of clergy, and the offenders therein shall be adjudged felons, and shall suffer death as in case of felony, without benefit of clergy."

Opposing, &c. the making such proclamation, felony without benefit of clergy.

§ 5. Provides, "that if any person or persons do or shall, with force and arms, wilfully and knowingly oppose, obstruct, or in any manner wilfully and knowingly lett, hinder, or hurt any person or persons that shall begin to proclaim or go to proclaim, according to the proclamation hereby directed to be made, whereby such proclamation shall not be made, that then every such opposing, obstructing, letting, hindering, or hurting such person or persons, so beginning or going to make such proclamation as aforesaid, shall be adjudged felony without benefit of clergy, and the offenders therein shall be adjudged felons, and shall suffer death as in case of felony, without benefit of clergy; and that also every such person or persons so being unlawfully, riotously, and tumultuously assembled, to the number of twelve as aforesaid, or more, to whom proclamation should or ought to have been made if the same had not been hindered, as aforesaid, shall likewise, in case they or any of them, to the number of twelve or more, shall continue together, and not disperse themselves within one hour after such lett or hinderance so made, having knowledge of such lett or hinderance so made, shall be adjudged felons, and shall suffer death as in case of felony, without benefit of clergy."

And persons so assembled, if the proclamation be hindered, shall nevertheless suffer as felons.

§ 6. Enacts, "that if after the said last day of *July*, 1715, any such church or chapel, or any such building for religious worship, or any such dwelling-house, barn, stable, or other out-house, shall be demolished or pulled down wholly, or in part, by any persons so unlawfully, riotously, and tumultuously assembled, that then, in case such church, chapel, building for religious worship, dwelling-house, barn, stable, or out-house, shall be out of any city or town, that is either a county of itself, or is not within any hundred, that then the inhabitants of the hundred in which such damage shall be done shall be liable to yield damages to the person or persons injured and damnified by such demolishing or pulling down wholly, or in part; and such damages shall and may be recovered by action to be brought in any of H. M.'s courts of record at *Westminster* (wherein no essoign, protection, or wager of law, or any imparlance shall be allowed,) by the person or persons damnified thereby, against any two or more of the inhabitants of such hundred, such action for damages to any church or chapel to be brought in the name of the rector, vicar, or curate of such church or chapel that shall be so damnified, in trust for applying the damages to be recovered in rebuilding or repairing such church or chapel; and that judgment being given for the plaintiff or plaintiffs in such action, the damages so be recovered shall, at the request of such plaintiff or plaintiffs, his or their executors or administrators, be raised and levied on the inhabitants of such hundred, and paid to such plaintiff or plaintiffs, in such manner and form, and by such ways and means, as are provided by the statute made in the seven-and-twentieth year of the reign of queen *Elizabeth*, for reimbursing the person or persons on whom any money recovered against any hundred by any party robbed shall be levied: and in case any such church, chapel, building for religious worship, dwelling-house, barn, stable, or out-house, so damnified, shall be in any

How the damages shall be made good, if any church, &c. be demolished, &c.

27 Eliz. c. 13.

city or town that is either a county of itself, or is not within any hundred, that then such damages shall and may be recovered by action to be brought in manner aforesaid (wherein no essoign, protection, or wager of law, or any imparlance shall be allowed,) against two or more inhabitants of such city or town; and judgment being given for the plaintiff or plaintiffs in such action, the damages so to be recovered shall, at the request of such plaintiff or plaintiffs, his or their executors or administrators, made to the justices of the peace of such city or town at any quarter sessions to be holden for the said city or town, be raised and levied on the inhabitants of such city or town, and paid to such plaintiff or plaintiffs, in such manner and form, and by such ways and means, as are provided by the said statute made in the seven-and-twentieth year of the reign of queen *Elizabeth*, for reimbursing the person or persons on whom any money recovered against any hundred by any party robbed shall be levied."' 1 G. 1. st. 2. c. 5.

§ 7. Enacts, "that this act shall be openly read at every quarter sessions, and at every leet or law day." This act to be read at the quarter sessions, &c.

§ 8. Provides, "that no person or persons shall be prosecuted by virtue of this act, for any offence or offences committed contrary to the same, unless such prosecution be commenced within twelve months after the offence committed." Prosecution within twelve months.

§ 9. Enacts, "that the sheriffs and their deputies, stewards and their deputies, bailies of regalities and their deputies, magistrates of royal boroughs, and all other inferior judges and magistrates, and also all high and petty constables, or other peace officers, of any county, stewartry, city, or town, within that part of *Great Britain* called *Scotland*, shall have the same powers and authority for putting this present act in execution within *Scotland* as the justices of the peace and other magistrates aforesaid respectively have by virtue of this act, within and for the other parts of this kingdom; and that all and every person and persons who shall at any time be convicted of any the offences aforementioned, within that part of *Great Britain* called *Scotland*, shall for every such offence incur and suffer the pain of death, and confiscation of moveables; and also that all prosecutions for repairing the damages of any church or chapel, or any building for religious worship, or any dwelling-house, barn, stable, or outhouse, which shall be demolished or pulled down in whole, or in part, within *Scotland*, by any persons unlawfully, riotously, or tumultuously assembled, shall and may be recovered by summar * action, at the instance of the party aggrieved, his or her heirs or executors, against the county, stewartry, city, or borough respectively, where such disorders shall happen, the magistrates being summoned in the ordinary form, and the several counties and stewartries called by edictal citation at the market-cross of the head borough of such county or stewartry respectively, and that in general, without mentioning their names and designations." Sheriffs, &c. in Scotland to have the same power as justices, &c. have in England. Punishment of persons offending in Scotland. Damages of any church, &c. pulled down, &c. in Scotland, how to be recovered, and of whom.

* *Sic.*

§ 10. Provides, "that this act shall extend to all places for religious worship, in that part of *G. B.* called *Scotland*, which are tolerated by law, and where H. M. king *George*, the prince and princess of *Wales*, and their issue, are prayed for in express words." To what places in Scotland this act shall extend.

By stat. 41 *G.* 3. (U. K.) *c.* 24., after reciting stats. 9 *G.* 3. *c.* 29., which recites stats. 1 *G.* 1. *st.* 2. *c.* 5. and 1 *W.* & *M. sess.* 1. *c.* 18., 41 G. 3. (U. K.) c. 24.

41 G. 3. (U.K.) c. 24. and that no provision is made in the said stat. 9 *G.* 3. *c.* 29. for the indemnification of the mills and works thereunto belonging: (see tit. Mill, Vol. III.) and whereas it is expedient that the like remedy and means of indemnification should be extended to the persons damnified and injured by the pulling down and demolishing such mills and works thereunto belonging, as are by the said act, 1 *G.* 1. *st.* 2. *c.* 5., now afforded and given to the persons damnified and injured by the demolishing and pulling down wholly or in part any church, chapel, building for religious worship, dwelling-house, barn, stable, or out-house, as in the said last-mentioned act is mentioned: it is therefore enacted, that if any wind saw-mill, or other wind-mill, or any water-mill or other mill, or any of the works thereunto belonging, shall be demolished or pulled down, wholly or in part by any persons so unlawfully, riotously, and tumultuously assembled, that then the damages sustained by the person or persons injured and damnified by such demolishing or pulling down wholly or in part, shall and may be sued for, recovered, levied, raised, and reimbursed in such manner and form and by such ways and means as are particularly provided in and by the said act made in the first year of the reign of his said late majesty king *George* the first, in respect to the several descriptions of buildings therein mentioned. (*a*)

Damages occasioned by the demolishing of mills, &c. by persons unlawfully assembled, may be sued for and recovered in the manner provided by the recited act of 1 G. 1. st. 2. c. 5.

52 G. 3. c. 130. Rioters pulling down, &c. buildings, engines, &c. used in trades or manufactories guilty of felony without clergy.

By stat. 52 *G.* 3. *c.* 130. reciting the 1 *G.* 1. *st.* 2. *c.* 5., the 9 *G.* 1. *c.* 22., the 9 *G.* 3. *c.* 29., the 41 *G.* 3. *c.* 24., and 43 *G.* 3. *c.* 58., and stating that it was expedient and necessary that more effectual provisions should be made for the protection of property not within the provisions of the said acts, makes the burning certain buildings, &c. used for manufactories, a capital offence (*b*), and enacts, § 2. that if any person or persons unlawfully, riotously, and tumultuously assembled together in disturbance of the public peace, shall unlawfully and with force demolish or pull down, or begin to demolish or pull down, any erection and building or engine which shall be used or employed in the carrying on or conducting of any trade or manufactory, or any branch or department of any trade or manufactory of goods, wares, or merchandise, of any kind or description whatsoever, or in which any goods, wares, or merchandise shall be warehoused or deposited, that then every such demolishing or pulling down, or beginning to demolish or pull down, shall be adjudged felony, without benefit of clergy, and the offenders therein shall be adjudged felons, and shall suffer death as in cases of felony, without benefit of clergy.

Nesham and others v. *Armstrong and others*, *Holt's C. N. P.* 466. *Durh. Ass.* 1816. *Cor. Bayley* J. This was an action against the hundred for the destruction of two staiths by a mob. One of the staiths, which are places parcel of a colliery, and used for deposit of coals, was burnt; the counts were framed on stat. 52 *G.* 3. *c.* 130. § 2. *Richardson* objected, *First*, that the case did not fall within stat. 52 *G.* 3. *c.* 130. §. 2., which extended only to *trades and manufactories*, the conductors of which (under the general name of traders and manufacturers) were meant to be protected from the

(*a*) See stat. 56 *G.* 3. *c.* 125., by which persons riotously assembled and pulling down any engines, &c. belonging to collieries, &c. are declared to be guilty of felony without benefit of clergy, Vol. I. title Coal Mines.

(*b*) See § 1. title Burning, Vol. I.

violence of a mob. Warehouses and depositories of goods might require such protection. But in the present case the staiths do not fall under the description in the act. They are not erections, buildings, or engines, for the purpose of trade and manufacture. They are parts of a colliery quite distinct from general trade; neither could the owners of the staiths be called *traders* in the common sense of the word. *Secondly*, with respect to the larger staith, it was burned. *Burning* is not included in the general word *demolishing*. There is a clause in the act (viz. § 1. *ante*, Vol. I. tit. Burning,) specifically providing redress against burning, which does not mention *demolishing*. *Bayley* J. I think burning is included in the general word *demolishing*, &c. The act meant to provide against destruction and spoliation: burning is only one of the means. With respect to the objection that the staith is not within the act of parliament, I will reserve the point. Verdict for plaintiffs, subject to a case which turned on another point relative to the mode of proceeding against the hundred, and on neither of the above objections. See 1 *B. & A.* 146. 52 G.3. c.130.

§ 3. The person or persons injured or damnified by such demolishing or pulling down, wholly or in part, of any such erection, building, or engine, as aforesaid, shall be entitled to, and may recover the value of, such erection, building, or engine, and of the machinery belonging thereto, or used therein, which shall be destroyed in such demolishing as aforesaid, or the amount of the damage which may be done to any such erection, building, or engine, or machinery aforesaid, in such tumultuous and riotous demolishing in part as aforesaid; and such value or damage shall and may be recovered, levied, raised, and reimbursed, in such manner and form, and by such ways and means, as are particularly provided in 1 *G.* 1. *st.* 2. *c.* 5.

Value of, or damage done to, manufactories and machinery therein may be recovered, as under 1 G.1. st.2. c.5.

§ 4. Provided no person shall be enabled to recover any damages by virtue of this act, unless he himself or by his servant, within two days after such damage or injury done him by any such offender or offenders, shall give notice of such offence done and committed unto some of the inhabitants of some town, village, or hamlet, near unto the place where any such fact shall be committed, and shall within four days after such notice give in his examination upon oath, or the examination upon oath of his servant or servants that had the care of his erections, buildings, engines, or machinery so destroyed or damaged as aforesaid, before any justice of the peace of the county, liberty, or division where such fact shall be committed, inhabiting within the said hundred where the said fact shall happen to be committed, or near unto the same, whether he or they do know the person or persons that committed such fact, or any of them; and if upon such examination it be confessed that he or they do know the person or persons that committed the said fact, or any of them, that then he or they so confessing shall be bound by recognisance to prosecute such offender or offenders by indictment or otherwise, according to the law of this realm: Provided also, that no person who shall sustain any damage by reason of any offence to be committed by any offender contrary to this act, shall be thereby enabled to sue or bring any action against any inhabitants of any hundred where such offence shall be committed, except the party or parties sustaining such damage shall commence his or their action or suit within one year next

How to proceed to recover damages.

after such offence shall be committed. See *Nesham* v. *Armstrong*, *ante*, 26., and stat. 3 *G.* 4. *c.* 33. tit. Hundred, Vol. II.

57 G.3. c.19. Damages done by riotous or tumultuous assemblies to be recovered.

And by stat. 57 *G.* 3. *c.* 19. § 38. In every case where any house, shop, or other building whatever, or any part thereof, shall be destroyed, or shall be in any manner damaged or injured, or where any fixtures thereto attached, or any furniture, goods, or commodities whatever which shall be therein, shall be destroyed, taken away, or damaged by the act or acts of any riotous or tumultuous assembly of persons, or by the act or acts of any person or persons engaged in or making part of such riotous or tumultuous assembly, the inhabitants of the city or town in which such house, shop, or building shall be situate, if such city or town be a county of itself, or is not within any hundred, or otherwise the inhabitants of the hundred in which such damage shall be done, shall be liable to yield full compensation in damages to the person or persons injured and damnified by such destruction, taking away, or damage; and such damages shall and may be demanded, sued for, and recovered by the same means and under the same provisions as in stat. 1 *G.* 1. *st.* 2. *c.* 5., with respect to persons injured by the demolishing or pulling down of any dwelling-house by persons unlawfully, riotously and tumultuously assembled. (For cases of actions against the hundred, see tit. Hundred, Vol. II.)

Under the number of twelve.] In the case of *Prichet* v. *Waldron and another*, 5 *T. R.* 14., it was determined that to support an action against the hundred for damages on the 1 *G.* 1. for riotously demolishing a house, it is not necessary to prove that twelve rioters were assembled at the time.

§ V. How by Two Justices.

13 H.4. c.7.

By stat. 13 *H.* 4. *c.* 7. § 1. *If any riot, assembly, or rout of people, against the law be made, the justices, three or two of them at the least, and the sheriff, or under-sheriff, shall come with the power of the county, if need be.*

2 H.5. c.8.

And by stat. 2 *H.* 5. *c.* 8. § 2. *The king's liege people being sufficient to travel, shall be assistants to them, upon reasonable warning, to ride with them in aid to resist such riots, routs, and assemblies, on pain of imprisonment, and to make fine and ransom to the king.*

If any riot, assembly, or rout of people, against the law, be made.] It is said that the justices are not only empowered hereby to raise the power of the county to assist them in suppressing a riot, which shall happen within their own view or hearing, but also that they may safely do it upon a credible information given them of a notorious riot happening at a distance, whether there were any such riot in truth or not; for it may be dangerous for them to stay till they can get certain information of the fact: but they seem to be punishable for alarming the country in this manner, without such probable ground for their proceeding, as would induce a reasonable man to think it necessary and convenient. 1 *Haw.* *c.* 65. § 22.

Assembly.] It seems clear from hence that if the justices in going towards the place where they have heard that there is a riot shall meet persons coming from thence riotously arrayed,

they may arrest them for being assembled together in such an unlawful manner, and also make a record thereof; for the statute extends to all other unlawful assemblies whatsoever as well as to riots. 1 *Haw. c.* 65. § 22.

The king's liege people.] Except women, clergymen, persons decrepit, and infants under the age of fifteen.

To resist such riots.] And also to arrest the rioters, and conduct them to prison.

And shall arrest them.] 13 *H.* 4. *c.* 7. § 1.

And if they shall escape, they may take them on a fresh pursuit; but they cannot at another time award any process against them on the record, but ought to send the record into the king's bench, that process may issue thereon from thence; yet there seems to be no doubt but that they may arrest them for their trespass on the aforesaid stat. 34 *Ed.* 3., in order to compel them to find sureties for their good behaviour. 1 *Haw. c.* 65. § 24.

And by stat. 13 *H.* 4. *c.* 7. § 1. *The same justices and sheriff, or under-sheriff, shall have power to record* (B.) *that which they shall find so done in their presence against the law; by which record the offenders shall be convict in the same manner and form as is contained in the statute of forcible entries.* (C.) 13 H. 4. c. 7. B. C.

Shall have power to record.] And this they may do, whether the offenders be in custody at the same time or have escaped. 1 *Haw. c.* 65. § 24.

Shall be convict.] And it seemeth to be certain that the record of a riot, expressly mentioned to have happened within the view of the justices by whom it is recorded, is a conviction of so great authority, that it can no way be traversed, however little ground of truth there might be to affirm that any riot at all was committed, or however innocent the parties may be of the fact recorded against them. 1 *Haw. c.* 65. § 25.

However it seemeth clear that if in such a record of a riot, it be contained that the party was guilty therein of a felony, or maim, or rescous, the party shall be concluded thereby as to the riot only, and not as to any of the other matters; because the justices have by this statute a judicial authority over no other offences except riots, routs, and unlawful assemblies. 1 *Haw. c.* 65. § 26.

And inasmuch as such a final record is a conviction of the parties, as to all such matters as are properly contained in it, it ought to be certain both as to the time and place of the offence, and the number of persons concerned therein, and the several kinds of weapons made use of by them, and all other circumstances of the fact; for since the parties are excluded from denying the truth of such record, and have no other remedy to defend themselves against it, but only by advantage of the insufficiency of what is contained in it, they may justly demand the benefit of excepting to it, if it do not expressly shew both that they are guilty within the meaning of the statute, and also how far they are guilty, and that the justices have pursued the power so given them by the said statute: from the same ground it seems also to follow that such a record may be excepted against, if it do not appear to have been made by the sheriff or under-sheriff in concurrence with the justices. 1 *Haw. c.* 65. § 26.

And this record ought to remain with one of the justices, and shall not be left amongst the records of the sessions, it being made out of sessions, and not appointed to be certified thither. *Dalt. c.* 82.

In the same manner and form as is contained in the statute of forcible entries.] That is, the statute of the 15 *R.* 2. *c.* 2. And thereupon it is said that the offenders being under the arrest of the justices, and also convicted by a record of their offence, ought immediately to be committed to gaol by the same justices till they shall make fine and ransom to the king; which can be assessed by no other justices of the peace, except those by whom the record of the offence was made. 1 *Haw. c.* 65. § 28.

And this fine, Mr. *Dalton* (*cap.* 82.) says, the justices shall cause to be estreated into the exchequer, that so it may be levied to the king's use; and then they are to deliver the offenders again.

But Mr. *Hawkins* says, that it hath been questioned whether the justices can safely dismiss the offenders upon their paying such a fine as shall be imposed upon them, without some judgment for their imprisonment as well as fine; because it is enacted by the 2 *H.* 8. *c.* 8. that such rioters attainted of great and heinous riots shall have one whole year's imprisonment at the least, without being let out of prison by bail or mainprise; and that the rioters attainted of petty riots shall have imprisonment as best shall seem to the king or to his council. 1 *Haw. c.* 65. § 35.

13 H. 4. c. 7. *And by stat.* 13 H. 4. c. 7. § 1. *If the offenders be departed before the coming of the said justices, and sheriff or under-sheriff, the same justices, three or two of them, shall diligently enquire* (D.) *within a month after such riot, assembly, or rout of people so made, and thereof shall hear and determine according to the law of the land.*

D.

The same justices.] It is generally said that any justices of the county may take such an enquiry, whether they dwell near the place where the riot happened, or at a distance, or whether they went to view the riot or not; for the statute ought to be construed as largely as the words will bear in favour of the justices' power in the suppressing of such riots; and therefore those words in the statute, *that the same justices shall enquire*, ought to be thus expounded, that the same justices who were before empowered to raise the posse shall enquire, and that is any justices in the county. 1 *Haw. c.* 65. § 32.

19 H. 7. c. 13. *Shall diligently enquire.*] This is, by a jury: in order to which, it is enacted by stat. 19 *H.* 7. *c.* 13. that the sheriff, on their precept directed to him, shall on pain of 20*l.* return twenty-four persons, whereof every of them shall have lands and tenements within the shire to the yearly value of 20*s.* of charter land or freehold, or 26*s.* 8*d.* of copyhold, or of both, over and above all charges; and he shall return upon every juror in issues, at the first 20*s.* and at the second 40*s.*

Note: Charter-land had its name from a particular form in the charter or deed, which ever since the reign of *H.* 8. hath been disused. 1 *Inst.* 6.

Within a month.] That is, if they do not make enquiry within a month, they are punishable for the neglect; yet they may enquire after the month; for the lapse of a month doth not de-

termine their authority, but only subjects them to a penalty. 2 *Salk.* 593.

Shall hear and determine according to the law of the land.] And therefore they may award process under their own teste against those who shall be indicted before them of any of the offences above mentioned, according to the form of this statute; and also may award the like process for the trial of a traverse of such an inquisition; and do all other things in relation thereunto, which are of course incident to all courts of record. 1 *Haw.* c. 65. § 34.

And the riot being so found by inquisition, the justices must make a record thereof in writing of such their enquiry or presentment found before them; which record also is to remain with one of the justices. *Dalt.* c. 82.

And by stat. 13 *H.* 4. *c.* 7. § 2. *If the truth cannot be found in the manner as is aforesaid, then within a month then next following, the justices, three or two of them, and the sheriff or under-sheriff, shall certify before the king and his council all the deed and circumstances thereof, which certificate shall be of the like force as the presentment of twelve men; upon which certificate the offender shall be put to answer, and shall be punished according to the discretion of the king and his council.* 13 H. 4. c. 7.

§ 3. *And if they do traverse the matter so certified, the certificate and traverse shall be sent into the K. B. to be tried.*

And by stat. 19 H. 7. c. 13. *If the offence be not found, by reason of any maintenance or embracery of the jurors, then the same justices and sheriff or under-sheriff shall in the same certificate certify the names of the maintainers and embracers, with their misdemeanors.* 19 H. 7. c. 13.

Shall certify.] And it seemeth certain that such certificate being in nature of an indictment at the common law, ought to comprehend the certainty of time, place, and persons, and other material circumstances, both of the riot and maintenance. 1 *Haw.* c. 65. § 13.

Before the king and his council.] It seems clear, by the council being here distinguished both from the chancery and K. B., that the certificate ought to be made to the privy council board, and not to either of those courts, which in some statutes relating to judicial proceedings are taken for the king's council. 1 *Haw.* c. 65. § 41.

And by stat. 2 H. 5. c. 8. *the said justices and other officers shall execute their offices aforesaid at the king's costs in going and continuing in doing their said offices, by payment thereof to be made by the sheriff, by indentures betwixt the said sheriff and justices and other officers aforesaid, whereof the sheriff upon his account in the exchequer shall have due allowance.* 2 H. 5. c. 8.

In order to the defraying of which, the said statute directs the fines of the offenders to be enlarged, and thereout the sheriff may pay the charges of the said justices; and of the jury, that is, for their diet; and the sheriff's fees, and the like. *Dalt.* c. 82.

§ 4. *And the justices dwelling nighest in the county, where such riot, assembly, or rout shall be, together with the sheriff or under-sheriff, shall do execution of the said statute of the* 13 H. 4. *every one upon pain of* 100*l.* *to the king.*

The justices dwelling nighest.] Although these only are liable to this penalty, yet if any others on notice shall neglect to supply their default, they are fineable at discretion. 1 *Haw.* c. 65. § 48.

But if any justices, who do not dwell nearest to the place, do actually execute the statute, they excuse all the rest. 1 *Haw.* c. 65. § 46.

Dwelling nighest in the county.] Therefore if they dwell nighest, but in another county, they are not in danger of this penalty. 1 *Haw.* c. 65. § 45.

Shall do execution of the said statute.] That is, in the whole, and not in part only; as by recording a riot, and committing the parties. 1 *Haw.* c. 65. § 50.

§ VI. How by Process out of Chancery.

2 H. 5. c. 8.

By stat. 2 *H.* 5. *c.* 8. *If default be found in the two justices, sheriff, or under-sheriff, then, at the instance of the party grieved, a commission shall be issued under the great seal, to enquire as well of the truth of the case for the complainant, as of such default.*

2 H. 5. c. 9. 8 H. 6. c. 14.

And by stats. 2 *H.* 5. *c.* 9. and 8 *H.* 6. *c.* 14. *Rioters shall be taken by writ and proclamation out of chancery, on suggestion of two justices and the sheriff, of the common fame of such riot.*

§ VII. Seditious Meetings and unlawful Assemblies.

39 G. 3. c. 79. Certain societies suppressed.

By stat. 39 *G.* 3. *c.* 79. § 1. After reciting that a traitorous conspiracy had long been carried on in conjunction with the persons exercising the powers of government in *France*, to overturn the laws and government in *G. B.* and *Ireland*, it is enacted, that all societies calling themselves *United Englishmen*, *United Scotchmen*, *United Irishmen*, and *United Britons*, and the society commonly called the *London Corresponding Society*, and all other *Corresponding Societies* of any other city, town, or place, shall be suppressed and prohibited. See stat. 57 *G.* 3. *c.* 19. *post.*

Societies, the members of which shall take unlawful oaths or engagements, &c. or where the names of some of the members or persons forming committees, &c. shall be kept secret, or where there are divisions or branch societies, are to be deemed unlawful combinations and confederacies.

§ 2. And all the said societies, and every other society, the members whereof shall according to the rules thereof, or to any agreement for that purpose, be required or admitted to take any oath or engagement deemed unlawful within the meaning of stat. 37 *G.* 3. *c.* 123. *for more effectually preventing the administering or taking of unlawful oaths* (a), or taking any oath not authorized by law; and every society, the members whereof shall take, subscribe, or assent to any test or declaration not required by law, or not authorised in manner hereinafter mentioned, and every society of which the names of the members, or of any of them, shall be kept secret from the society at large; or which shall have any committee or select body so chosen or appointed, that the members constituting the same shall not be known by the society at large to be such members, or which shall have any president, treasurer, secretary, delegate, or other officer so appointed, that such appointment shall not be known to the society at large, or where the names of all the members, and of all committees or select bodies of members, and of all presidents and other officers, shall not be entered in a book to be kept for that purpose, and to

(a) See this act, title Oaths.

be open to the inspection of all the members of such society; and every society composed of different divisions, or different parts acting separately from each other, or of which any part shall have a separate and distinct president, &c. or other officer appointed by or for such part, or to act as an officer for such part, shall be deemed unlawful combinations and confederacies; and every person who shall become a member of any such society, or being a member, shall act as a member, or directly or indirectly maintain correspondence or intercourse with any such society, or any division, committee, officer, or member thereof, or who shall, by contribution of money, or otherwise, aid or support such society, or any member or officer thereof, shall be deemed guilty of an unlawful combination and confederacy. 39 G. 3. c. 79.

§ 3. Provided nevertheless, that nothing herein shall extend to any declaration taken, subscribed, or assented to, by the members of any society, in case the form thereof shall have been first approved and subscribed by two justices of the county or place where such society shall ordinarily assemble, and shall have been registered with the clerk of the peace, or his deputy, (for which shall be paid 1*s*. and no more,) but such approbation of the justices shall remain valid no longer than until the next general sessions for such county or place, unless the same shall be confirmed at such sessions; and if not then confirmed, the provisions of this act shall from thenceforth extend to such declarations, and to all persons subscribing the same, so far as they may relate to all acts which may be done by them or any of them, subsequent to the holding of such sessions.

Not to extend to declarations approved by two justices, and confirmed at the sessions.

§ 4. Provided that no person who, before the passing of this act, shall have been a member of any such society shall be liable to any penalty, in case he shall not in any manner act as a member after the passing of this act.

Nor to persons not acting after the passing of this act.

§ 5. But nothing herein shall extend to *lodges of Free Masons* which, before the passing of this act, have been usually holden under that denomination, and in conformity to the rules prevailing amongst such societies; provided that two members of each lodge certify upon oath before a justice, that such society or lodge has, before the passing of this act, been usually held under the denomination of a *lodge of Free Masons*, and in conformity to the rules prevailing amongst such societies; which certificate, duly attested by the magistrate before whom sworn, and subscribed by the person so certifying, shall, within two calendar months after the passing of this act, be deposited with the clerk of the peace for the county or place where such lodge hath been usually held.

Nor to Free Masons.

§ 6. Provided also, that this exemption shall not extend to any such lodge, unless the name or denomination thereof, and the usual places and times of its meetings, and the names and descriptions of the members thereof, be registered with such clerk of the peace within two months after the passing of this act, and also on or before the 25th of *March* in every succeeding year.

§ 7. And the clerk of the peace or person acting in his behalf shall receive such certificate, and make such registry as aforesaid, and enroll the same among the records of such county or place, and shall lay the same once in every year before the general sessions, who may, if they so think fit, upon complaint upon oath of one credible person, that the continuance of the meetings

Certificates and registry to be laid before the sessions yearly, who may discontinue any lodge.

39 G.3. c.79. of such lodge is likely to be injurious to the public peace, direct that such meeting shall be discontinued; and every such meeting held notwithstanding such discontinuance shall be deemed an unlawful combination and confederacy under the provisions of this act.

Unlawful meeting being held at alehouses, &c. two justices may declare the licence void.

E.

§ 14. Two justices, upon evidence on oath that any meeting of any society hereby declared to be unlawful, or any meeting for any seditious purposes hath been held at any house, room, or place licensed to sell ale, beer, wine, or spirits, may declare the licence for selling thereof forfeited (E), and the person keeping the same shall, after the day of such declaration, be liable to every penalty and forfeiture he would have been subject to if such licence had expired on that day.

Places for debating, &c. for the purpose of raising money, deemed disorderly, unless previously licensed.

§ 15. And whereas places have of late been used for delivering lectures, and holding debates, which are not within the provisions of 36 *G.* 3. *c.* 8. (*a*), but which have in many instances been of a seditious and immoral nature, and other places have of late been used for the like purposes, under the pretence of reading books, pamphlets, newspapers, or other publications; it is enacted, that every house, room, field, or other place, at or in which any lecture shall be publicly delivered, or any public debate had on any subject whatsoever, for the purpose of collecting money or other valuable thing from the persons admitted or to which any person shall be admitted by payment of money, or by any ticket, or token of any kind delivered in consideration of money or other valuable thing, or in consequence of paying or giving, or having paid or given, or having agreed to pay or give in any manner any money or other valuable thing, or where any money or other valuable thing shall be received from any person admitted either under pretence of paying for refreshment or other thing, or under any pretence or for any other cause, or by means of any device whatever: and every place which shall be opened or used as a place of meeting for the purpose of reading books or other publications, and to which any person shall be admitted by payment of money, &c. &c. shall be deemed a disorderly house or place, within the meaning of the said act of 36 *G.* 3. *c.* 8. unless the same shall have been previously licensed in manner hereafter mentioned; and the person by whom such place shall be opened or used for any of the purposes aforesaid shall forfeit

Penalty.

100*l.* for every day or time so opened or used as aforesaid, to the person who shall sue, and be otherwise punished as the law directs in cases of disorderly houses. And every person conducting the proceedings, or acting as moderator, president, or chairman, at any such place, or therein debating or delivering any discourse, or furnishing any book, pamphlet, newspaper, or other publication as aforesaid; and also every person who shall pay, give, collect, or receive any money or other thing, or agree so to do, in respect to the admission of any person, or shall deliver out, distribute, or receive any ticket or token as aforesaid, knowing such place to be so opened or used for such purpose as aforesaid, shall, for every such offence, forfeit 20*l.*

(*a*) This act of 36 *G.* 3. c.8. was to continue for three years, from 18th *December, 1795*, and from thence to the end of the then next session of parliament.

§ 16. Every person who shall appear at, or behave as master, or as the person having the command, government, or management of any such house or place, shall be deemed to be a person by whom the same is opened or used as aforesaid, and shall be liable to be prosecuted as such, notwithstanding he be not in fact the real owner or occupier. 39 G.3. c.79. Person appearing as master liable to prosecution, although not the real owner.

§ 17. And any justice who shall by information upon oath have reason to suspect that any house, room, field, or place, or any part thereof, is opened or used for the purpose of delivering lectures, or for public debate, or for reading books, pamphlets, newspapers, or other publications contrary to this act, may go to such place, and demand admittance; and if he shall be refused, the same shall be deemed a disorderly house or place, and all the provisions herein contained, and in the said act of 36 *G.* 3. *c.* 8. shall be applied to such house or place; and every person refusing such justice admittance shall forfeit 20*l.* Justices may enter suspected places.

§ 18. Provided nevertheless, that two justices at any general or special sessions may, by writing under their hands and seals, grant a licence to any person to open any such house or place for the purpose of delivering, for money, any such lectures as aforesaid on any subject, the same being clearly expressed in such licence; or for reading books, pamphlets, newspapers, or other publications (for which licence 1*s.* shall be paid, and no more,) and the same shall be in force for one year, and no longer, or for any less time therein specified; which licence the justices at any general sessions may revoke by their order, a copy whereof shall be served upon the person to whom such licence was granted, or be left at such place, and thereupon the same shall cease and be utterly void. Sessions may license houses for lecturing, &c. and may revoke the same.

§ 19. And any justice may go to any such licensed place at the time of delivering or appointed for delivering lectures therein, or while opened or used for that purpose, and demand admittance, and if he shall be refused, notwithstanding such licence, the same shall be deemed a disorderly house or place within this act; and every person refusing such admittance shall forfeit 20*l.* Justices may enter licensed places.

§ 20. Any two justices upon evidence on oath that any such licensed place is commonly used for delivering lectures of a seditious or immoral tendency, or that books or other publications of the like nature are there commonly kept and delivered to be read, may declare such licence forfeited, and the same shall from thenceforth be utterly void. And if used for seditious purposes may declare the licence void.

§ 21. And every house or place licensed to sell ale, beer, wine, or spirits, shall also be deemed a place licensed for reading books, pamphlets, and other publications within the meaning of this act; but nevertheless, any two justices, on proof on oath that publications of a seditious or immoral nature are usually distributed for the purpose of being read at such place, may adjudge such licence forfeited (E); and the person keeping such house shall, after such adjudication, be liable to every penalty and forfeiture as if such licence had expired. Every alehouse, &c. to be deemed licensed for reading. E.

§ 22. Provided always, that nothing herein shall extend to any lectures delivered at the universities, or in the inns of court, or chancery, or by the professors of *Gresham* College; and no payment made to any schoolmaster or other person delivering lectures Not to extend to the universities, &c. nor to payments to schoolmasters.

for the instruction of youth only shall be deemed a payment for admission within the meaning of this act.

§ 13. Every person who shall knowingly permit any meeting of any society hereby declared to be an unlawful combination or confederacy, or of any division, branch, or committee of such society, to be held in his house or apartment, shall, for the first offence, forfeit 5*l.*, and for every other offence committed after the date of his conviction be deemed guilty of an unlawful combination and confederacy.

Punishment of persons guilty of combinations and confederacies.

§ 8. And every person who shall be guilty of any such unlawful combination and confederacy as in this act described may be proceeded against in a summary way, either before one justice, or by indictment; who, on conviction (F) on the oath of one witness by such justice, shall be committed to the common gaol or house of correction without bail for three calendar months, or shall forfeit 20*l.* as to such justice shall seem meet; which if not forthwith paid into the hands of such justice he may levy the same by distress, together with the costs, and for want of sufficient distress may commit such offender to the common gaol or house of correction, for any time not exceeding three calendar months. And if any such offender be convicted upon indictment, he may be transported for seven years, or may be imprisoned for not exceeding two years, as the court shall think fit.

F.

Justices may mitigate punishments.

§ 9. Provided always, that such justice may mitigate such punishment (if he shall see cause) so as not to reduce the same to less than one third, whether it be by imprisonment or fine.

Offenders not to be prosecuted two ways.

§ 10. But no person prosecuted before a justice shall be prosecuted also by indictment; and if prosecuted by indictment, shall not be prosecuted before a justice.

§ 11. Provided, that nothing herein shall extend to prevent any prosecution by indictment or otherwise for any offence within the meaning of this act, which might have been prosecuted if this act had not been made, unless the offender hath been prosecuted under this act.

Prosecutions to be within three months.

§ 34. Provided always, that no person shall be prosecuted or sued for any penalty hereby imposed, unless such prosecution be commenced, or action brought, within three calendar months.

Penalties, how to be recovered.

§ 35. All pecuniary penalties hereby imposed exceeding 20*l.* are to be recovered in the courts at *Westminster*. If not exceeding 20*l.* (for the recovery whereof no provision is hereinbefore contained) may be recovered before one justice where such penalty shall be incurred, or the person having incurred the same shall happen to be, in a summary way (G). And in case such last-mentioned penalty shall not be forthwith paid, such justice shall cause the same to be levied by distress and sale of the offender's goods, together with the costs of such distress and sale, and for want of sufficient distress such offender shall be committed to the common gaol or house of correction, for not exceeding six nor less than three calendar months.

G.

Application of penalties.

§ 36. All pecuniary penalties, whether recovered before a justice or by action, shall be applied half to the informer, and half to the king.

Limitation of actions.

§ 37. And every action and suit, against any justice, peace officer, or other person acting in pursuance of this act, shall be commenced within three calendar months, and shall be laid in the

proper county; and if the defendant recover he shall have double costs. 39 G. 3. c. 79.

§ 38. And all convictions, &c. shall be in the forms E, F, G. Conviction, &c.

By stat. 57 *G.* 3. *c.* 19. § 23. (*a*) After reciting that it is highly inexpedient that public meetings or assemblies should be held near the houses of parliament, or near the courts of justice in *Westminster-hall* on certain days; it is enacted, that it shall not be lawful for any person to convene, or to give any notice for convening any meeting consisting of more than fifty persons, or for any number of persons exceeding fifty, to meet in any street, square, or open place, in the city or liberties of *Westminster*, or county of *Middlesex*, within the distance of a mile from the gate of *Westminster-hall*, (except such parts of the parish of *St. Paul's Covent-garden*, as are within such distance,) for the purpose of considering of or preparing any petition, &c. for alteration of matters in church or state, on any day on which the two houses, or either house of parliament, shall meet and sit, nor on any day on which the courts shall sit in *Westminster-hall*. And that if any meeting or assembly for such purposes shall be assembled or holden on such day, it shall be deemed an *unlawful assembly*. Provided that this enactment shall not apply to any meeting for the election of members of parliament, or to persons attending upon the business of either house of parliament, or any of the said courts. (See stat. 60 *G.* 3. *c.* 6. § 23. *post*, p. 44.) 57 G. 3. c. 19. For preventing seditious meetings.

§ 24. After reciting that whereas divers societies or clubs have been instituted, in the metropolis and in various parts of this kingdom, of a dangerous nature and tendency, inconsistent with the public tranquillity, and the existence of the established government, laws, and constitution of the kingdom; and that the members of many of such societies or clubs have taken unlawful oaths and engagements of fidelity and secrecy, and have taken or subscribed, or assented to, illegal tests and declarations; and that many of the said societies or clubs elect, appoint, or employ committees, delegates, &c. to confer or correspond with other societies or clubs, and to induce other persons to become members, and by such means maintain an influence over large bodies of men, and delude many ignorant and unwary persons into the commission of acts highly criminal: and whereas certain societies or clubs calling themselves *Spenceans* or *Spencean Philanthropists*, hold and profess for their object the confiscation and division of the land, and the extinction of the funded property of the kingdom: and whereas it is expedient and necessary that all such societies or clubs should be utterly suppressed and prohibited as unlawful combinations and confederacies, highly dangerous to the peace and tranquillity of this kingdom, and to the constitution of the government thereof, it is enacted, " that all societies or clubs calling themselves *Spenceans* or *Spencean Philanthropists*, and all other societies or clubs, by whatever name or description the same are called or known, who hold and profess, or who shall hold and profess, the same objects and doctrines, shall be and the same are hereby utterly suppressed and prohibited, as being unlawful combinations and confederacies against the government of our sove- Spencean societies or clubs, &c. suppressed and prohibited.

(*a*) By § 22. the clauses and provisions of the act therein-before contained were to continue in force until 24th *July*, 1818.

57 G.3. c.19. reign lord the king, and against the peace and security of H. M.'s liege subjects."

Societies taking unlawful oaths, &c.

§ 25. Enacts, "that all and every the said societies or clubs, and also all and every other society or club now established or hereafter to be established, the members whereof shall be required or admitted to take any oath or engagement which shall be an unlawful engagement within the meaning of 37 *G.* 3. *c.* 123., or within the meaning of 52 *G.* 3. *c.* 104., (see *title* Oaths, Vol. III.) or to take any oath not required or authorized by law; and every society or club, the members whereof or any of them shall take or in any manner bind themselves by any such oath or engagement, on becoming, or in order to become, or in consequence of being a member or members of such society or club; and every society or club, the members or any member whereof shall be required or admitted to take, subscribe, or assent to, or shall take, subscribe, or assent to any test or declaration not required or authorized by law, in whatever manner or form such taking or assenting shall be performed, whether by words, signs, or otherwise; either on becoming or in order to become, or in consequence of being a member or members of any such society or club; and every society or club that shall elect, appoint, nominate, or employ any committee, delegate or delegates, representative or representatives, missionary or missionaries, to meet, confer, or communicate with any other society or club, or with any committee, delegate or delegates, representative or representatives, missionary or missionaries, of such other society or club, or to induce or persuade any person or persons to become members thereof, shall be deemed and taken to be unlawful combinations and confederacies, within the meaning of 39 *G.* 3. *c.* 79., and shall and may be prosecuted, proceeded against, and punished, according to the provisions of the said act; and every person who, from and after the passing of this act, shall become a member of any such society or club, or who, after the passing of this act, shall act as a member thereof, and every person who, from and after the passing of this act, shall directly or indirectly maintain correspondence or intercourse with any such society or club, or with any committee or delegate, representative or missionary, or with any officer or member thereof, as such, or who shall, by contribution of money or otherwise, aid, abet, or support such society or club, or any members or officers thereof, as such, shall be deemed guilty of an unlawful combination and confederacy within the intent and meaning of the said 39 *G.* 3. *c.* 79.; and shall and may be proceeded against, prosecuted, and punished, according to the provisions of the said act, with regard to the prosecution and punishment of unlawful combinations and confederacies."

Or electing committees, delegates, &c.

Members guilty of unlawful combination.

Act not to extend to Free Masons' lodges; nor to declaration approved by two justices; nor to extend to meetings or societies for charitable purposes.

§ 26. Provides that nothing in this act contained shall extend to lodges of Free Masons complying with the regulations of 39 *G.* 3. *c.* 79.; nor to any declaration approved and subscribed by two or more justices of the peace, and confirmed by the major part of the justices present at a general session, or at a general quarter sessions of the peace, pursuant to the regulations of 39 *G.* 3. *c.* 79., nor to any meeting of quakers; or to any meeting or society formed or assembled for purposes of a religious or charitable nature only, and in which no other matter or business whatsoever shall be treated of or discussed.

§ 27. After reciting statute 39 *G*. 3. *c*. 79. § 2. enacts, that the said enactment shall not extend to any meeting of quakers, or to any meeting or society formed or assembled for purposes of a religious or charitable nature only, and in which no other matter or business whatsoever shall be treated of or discussed. 57 G. 3. c. 19. — 39 G. 3. c. 79. § 2. not to extend to quakers' meetings, &c.

§ 28. "If any person shall knowingly permit any meeting of any society or club hereby declared to be an unlawful combination or confederacy, or of any division, branch, or committee of such society or club, to be held in any house or apartment, building, or other place, to him or her belonging, or in his or her possession or occupation, such person shall, for the first offence, forfeit the sum of 5*l*., and shall, for any such offence committed after the date of his or her conviction for such first offence, be deemed guilty of an unlawful combination and confederacy, in breach of this act." Penalty on persons permitting unlawful assemblies.

§ 29. "It shall be lawful for any two or more justices of the peace, acting for any county, stewartry, riding, division, city, town, or place, upon evidence on oath that any meeting of any society or club hereby declared to be an unlawful combination and confederacy, or any meeting for any seditious purpose, hath been held, after the passing of this act, at any house, room, or place, licensed for the sale of ale, beer, wine, or spirituous liquors with the knowledge and consent of the person keeping such house, room, or place, to adjudge and declare the licence or licences for selling ale, beer, wine or spirituous liquors, granted to the person or persons keeping such house, room, or place, to be forfeited; and the person or persons so keeping such house, room, or place, shall from and after the day of the date of such adjudication and declaration and notice thereof given to him, her, or them, be subject and liable to all and every the penalties and forfeitures for any act done after that day, which such person or persons would be subject and liable to, if such licence or licences had expired, or otherwise determined on that day." Licences of public-houses where unlawful clubs are held, to be forfeited.

§ 30. All pecuniary fines, penalties, or forfeitures, exceeding 20*l*. incurred under this act, in *England*, *Wales*, or *Berwick-upon-Tweed*, may be recovered by action of debt in any of H. M.'s courts of record at *Westminster*, and in *Scotland* in the court of session there; and it shall be sufficient to declare in *England* or conclude in *Scotland*, that the defendant or defender is indebted to the plaintiff or pursuer in the sum of——— (being the sum demanded by the said action,) being forfeited by an act made in the 57th year of the reign of his present majesty, intituled *An act for the more effectually preventing seditious meetings and assemblies*; and the plaintiff or pursuer, if he shall recover in such action, shall have his full costs or expences; and any pecuniary penalty imposed by this act not exceeding 20*l*., and for the recovery whereof no provision is hereinbefore contained, may be recovered before any justice of the peace for the county, city, town, or place, in which the same shall be incurred, or the person having incurred the same shall happen to be, in a summary way: and in case such last-mentioned penalty shall not be forthwith paid, such justice shall by warrant under his hand and seal, and directed to any constable or other peace officer, cause the same to be levied by distress and sale of the offender's goods and chattels, together with all costs and charges attending such dis- Penalties exceeding 20*l*. how to be recovered. Penalties no exceeding 20*l*. how to be recovered.

57 G.3. c.19. tress and sale; and in case no sufficient distress can be had or made, such justice shall commit the offender to the common gaol or house of correction for such county, city, town, or place, there to remain without bail or mainprise, for any time not exceeding six calendar months, nor less than three calendar months: Provided always, that no person shall be prosecuted or sued for any pecuniary penalty imposed by this act, unless such prosecution shall be commenced, or action brought, within three calendar months next after such penalty shall have been incurred.

Application of penalties. § 31. All penalties and forfeitures shall, when recovered, be disposed of thus: one moiety thereof to the plaintiff in any action, or to the informer before any justice, and the other moiety thereof to H. M.

Limitation of actions. § 32. Any action and suit which shall be brought against any justice of the peace, constable, peace officer, or other person, in *England*, *Wales*, or the town of *Berwick-upon-Tweed*, for any thing done in pursuance of this act, shall be commenced within three calendar months next after the fact committed, and the venue in every such action or suit shall be laid in the proper county where the fact was committed, and not elsewhere; and the defendant in every such action or suit may plead the general issue, and give this act and the special matter in evidence at any trial; and if such action or suit shall be brought or commenced after the time limited, or the venue shall be laid in any other place than as aforesaid, the jury shall find a verdict for the defendant; and in such case, or if the jury shall find a verdict for the defendant upon the merits, or if the plantiff shall become nonsuit, or discontinue his action after appearance, or if upon demurrer, judgment shall be given against the plaintiff, the defendant shall have double costs; which he may recover in such manner as any defendant can by law in other cases.

General issue may be pleaded.

Double costs.

Limitation of actions, &c. in Scotland. § 33. Every action and suit which shall be brought or commenced against any person in *Scotland*, for any thing done or acted in pursuance of this act, shall in like manner be commenced within three calendar months after the fact committed, and shall be brought in the court of session in *Scotland;* and the defender may plead that the matter complained of was done in pursuance of this act, and may give this act and the special matter in evidence; and if such action or suit shall be brought or commenced after the time limited, the same shall be dismissed; and in such case, or if the defender shall be assoilzied, or the pursuer shall suffer the action or suit to fall asleep, or a decision shall be pronounced against the pursuer upon the relevancy, the defender shall have treble costs or expences; which he may recover in such manner as any defender can by law recover costs or expences in other cases.

Form of conviction. § 34. Convictions by any justices of the peace for offences against this act, and adjudications of forfeitures of licences to be made in pursuance of this act, shall or may be in the several forms set forth for such purposes respectively in the schedule to this act

H. I. K. annexed, or in words to that effect. *Vide* forms H. I. K.

Act not to affect other provisions made by law. § 35. Nothing in this act contained shall be deemed to take away or abridge any provision already made by the law of this realm, or of any part thereof, for the suppression or punishment of any offence whatsoever described in this act.

§ 36. Provides that no person shall be prosecuted under this act for having been a member of any society or club declared hereby to be an unlawful combination and confederacy, if such person shall not have acted as a member after the passing of this act; but that nothing in this act shall extend to prevent any prosecution, by indictment or otherwise, for any thing which shall be an offence within this act, and which might have been so prosecuted if this act had not been made: provided always, that no person who shall be prosecuted and convicted or acquitted of any offence against this act shall be liable to be again prosecuted for the same offence. 57 G.3. c.19. Persons not liable to prosecution under this act for having been members of any club previous to the passing of this act, &c.

§ 37. In case any proceeding or prosecution shall be instituted, for any offence committed against stat. 39 *G.* 3. *c.* 79. or this act, either by action, or by information before any justice or otherwise, the attorney-general in *England*, or the lord-advocate of *Scotland* may order any such proceeding to be stayed; and in case of any judgment or conviction, &c. one of H. M.'s principal secretaries of state may by an order under his hand stay the execution of such judgment or conviction, or mitigate or remit any fine or forfeiture, or any part thereof. Provision empowering the attorney-general and lord-advocate and secretary of state to stay proceedings.

§ 39. This act not to extend to *Ireland*. Act not to extend to Ireland.

And by stat. 60 *G.* 3. *c.* 6. intituled "*An act for more effectually preventing seditious meetings and assemblies*," dated 24th *December*, 1819 (*a*), it is enacted, § 1. that no meeting exceeding 50 persons (except any meeting of a county, riding, or division of a county, called by the lord lieutenant, governor, or custos rotulorum or sheriff, or any meeting called by the sheriff or steward-depute or substitute, or convener of any county or stewartry, or any meeting called by 5 or more acting justices of the county, stewartry, or place where such meeting shall be holden, or any meeting of any riding or division called by 5 or more justices of such riding or division, or any meeting called by the major part of the grand jury at the assizes, or any meeting of any city, borough, or town corporate called by the head officer, or any meeting of any ward or division of any city called by the head officer, or any meeting of a corporate body) shall be holden for the purpose or on the pretext of deliberating on any public grievance, or on any matter relating to any trade, manufacture, business, or profession; or on any matter in church or state; or of considering or proposing any petition, complaint, remonstrance, declaration, resolution, or address on the subject thereof, unless in the parish, or (if divided into townships having distinct overseers) in the township, within which the persons calling the meeting usually inhabit; nor unless 6 days' notice in writing of the intention to hold such meeting, and of the time, place, and purpose of holding it shall be delivered personally to some justice residing in or near the parish or township, and usually acting for the district within which the parish or township is; nor unless such notice shall be subscribed by 7 householders usually resident within the parish or township, and their places of abode and descriptions inserted in the notice. 60 G.3. c.6. No meeting of more than 50 persons (except county meetings, &c.) to be holden, unless in separate parishes or townships within which the persons calling the meeting usually inhabit, nor without notice to a justice of the peace by 7 householders.

(*a*) From an "Abstract of Six Acts of Parliament, (passed in the Month of *December*, 1819,) for the Repression of Blasphemy, Treason, and Sedition, and the Regulation of Public Meetings, and Rooms for Public Lectures or Readings." Printed by George Eyre and Andrew Strahan, Printers to the King's Most Excellent Majesty. 1820.

60 G. 3. c. 6.

Justice may alter time and place of meeting; and notify the same in writing.

§ 2. The justice to whom any such notice shall be delivered may alter time and place of such meeting, and fix any other time not more than 4 days from the day proposed, or any other convenient place within the parish or township; in which case he shall notify in writing such alteration, and either give such notification to the person who shall deliver the notice, or leave it, within 2 days after the delivery of the notice, at the abode specified in the notice of any one of the 7 persons subscribing same; and the said meeting shall not be held at any other time or place than shall be so fixed.

No adjournments of meetings, &c.

§ 3. No meeting held according to notice, or as altered as aforesaid, shall be adjourned to any other time or place; and every meeting held by way of or under pretence of being an adjourned meeting for the purpose or on the pretext of deliberating as aforesaid shall be deemed an unlawful assembly.

Who may and may not attend meetings.

§ 4. No persons (except justices, sheriffs, under-sheriffs, constables, or other peace officers, or others acting in their aid,) shall attend any meeting exceeding 50 persons, which shall be holden for the purpose or on the pretext of deliberating as aforesaid, unless such person, when the meeting shall be for any county, riding, division, or stewartry, shall be a freeholder, copyholder, heritor, householder, or inhabitant usually residing in the county, riding, division, or stewartry, within and for which the meeting shall be holden; or a freeman or member of the corporation, if the meeting be of any corporate body; or a householder, or inhabitant usually residing, or freeholder or copyholder of the annual value of 50*l.*, (of which he shall have been in possession 12 months,) in the city, borough, or town corporate, parish, or township, within and for which such meeting shall be holden. Not to extend to any member of parliament attending any such meeting in the place for which he shall be serving, nor to any voter attending any meeting of the city, borough, town, or place for which he has a right to vote, called by the head officer.

Attending meetings contrary to this act.

§ 5. Persons knowingly attending any meeting holden for the purpose, or on the pretext aforesaid, not being any of the persons described in § 4., shall upon conviction be liable to fine and imprisonment, not exceeding 12 months, at the discretion of the court.

Justices, &c. may resort to assemblies; and may require aid of constables, &c.

§ 6. Justices, sheriffs, under-sheriffs, mayors, and other head officers, within their respective jurisdictions, where any meeting shall be holden or proposed for the purpose, or on the pretext aforesaid, may proceed to the place of meeting, and act as the case may require; and may require the assistance of any number of constables or peace officers, or any other persons in their aid. See § 4.

Cases where meetings shall be deemed unlawful.

§ 7. If the notice for any meeting shall express or purport that any thing by law established may be altered otherwise than by authority of parliament, or shall tend to incite the people to hatred or contempt of H. M., or the government and constitution, the meeting held in pursuance of it shall be deemed an unlawful assembly.

Persons attending illegal meetings to be required by proclamation to depart.

§ 8. If any person shall attend any meeting holden for the purpose or on the pretext aforesaid contrary to this act, any justice, sheriff, under-sheriff, mayor, or head officer of the place within which such meeting shall be held, may make proclamation in the form directed in this act, commanding every person so unlawfully

attending to depart; and such person not departing within a quarter of an hour after proclamation, shall be guilty of felony, and liable to 7 years' transportation. The justice or other person making proclamation shall, among the persons assembled, or as near as he can safely come, with a loud voice command silence, and after that shall openly and with a loud voice make proclamation. 60 G.3. c.6. Not departing, transportation.

§ 9. Gives the form of proclamation, as follows:

OUR sovereign lord the king chargeth and commandeth every person here assembled, who is not a freeholder, heritor of———, freeman of———, member of———, householder of———, or inhabitant usually residing, or freeholder in, or copyholder in——, [naming the county, riding, division, stewartry, city, borough, town, body corporate, parish, or township, as the case may be,] *or who is not entitled to attend this meeting, immediately to depart from this meeting to his lawful business.* God save the King. Form of *first* proclamation.

§ 10. After proclamation made, any person lawfully attending may apprehend any person not entitled to attend, who shall not forthwith depart, and may carry him before a justice of the peace. Arresting persons not departing.

§ 11. Where meeting shall be held, or persons assemble for the purpose of holding meeting contrary to this act, or where any person not entitled to attend shall refuse to depart for a quarter of an hour after proclamation made, any justice, sheriff, or under-sheriff, or mayor or head officer, or justice of city or town corporate of the place within which the meeting shall be held or persons assemble, may make proclamation commanding all persons to depart; and if any persons so assembled shall to the number of 12 continue together for half an hour after such proclamation, they shall be guilty of felony, and liable to seven years' transportation. Persons assembled contrary to act not dispersing after being required so to do by proclamation, transportation.

§ 12. Prescribes the order of making proclamation to be as in § 9., and gives form of proclamation, as follows:

OUR sovereign lord the king chargeth and commandeth all persons here assembled immediately, to disperse themselves, and peaceably to depart to their habitations, or to their lawful business. God save the King. Form of *second* proclamation.

§ 13. If a justice present at such meeting shall order any person who shall attend contrary to the act, or who shall at such meeting propound or maintain any proposition for altering any thing by law established otherwise than by authority of parliament, or shall advisedly make any proposition, or hold any discourse for the purpose of inciting the people to hatred and contempt of the king, or the government and constitution, to be taken into custody, and in case such justice or peace officer acting under his orders shall be forcibly obstructed in taking into custody any such person, such justice may thereupon make the proclamation in § 12., and persons to the number of 12 continuing together for half an hour after proclamation made shall be guilty of felony, and liable to seven years' transportation. Justices at meetings, on notice, may order persons propounding or maintaining propositions for altering any thing by law established (exception to be arrested. Obstructing justice. Proclamation. Not departing after proclamation transportation.

§ 14. Persons who with force knowingly obstruct any justice or person authorized, or acting in aid of any justice who shall attend or disperse, or shall begin to proclaim, or be going or endeavouring to make proclamation under this act, whereby such proclamation shall not be made; and persons to whom such proclamation Obstructing justices.

60 G. 3. c. 6.

12 or more persons continuing together, &c.

should have been made, if it had not been hindered, who shall, to the number of 12 or more, continue together, and shall not disperse within half an hour after such hinderance, knowing the same, and persons with force knowingly obstructing any justice, peace officer, or other acting in their aid in arresting or detaining in execution of this act any person, or endeavouring so to do, shall be guilty of felony, and liable to seven years' tranportation.

Transportation.

Justices, &c. indemnified in case of persons being killed, &c.

§ 15. If any persons assembled contrary to the act shall be killed, maimed, or hurt in the dispersing, apprehending, or detaining any of them, or in endeavouring so to do, by reason of their resistance, every justice or other peace officer and person aiding them shall be indemnified.

Meetings in rooms.

§ 16. Act not to extend to any meeting holden in a room.

Election meetings.

§ 17. Act not to extend to any meeting held in any place returning any member to parliament after the issuing and before the return of the writ for the election.

Attending meetings with arms.

§ 18. No person shall attend any meeting holden for the purpose, or on the pretext aforesaid, armed with any gun, pistol, sword, dagger, pike, bludgeon, or other offensive weapon: offenders convicted to be imprisoned not exceeding two years. This prohibition not to extend to justices, &c. or others acting in their aid.

Punishment.

Proviso.

Attending meetings with flags, &c.

§ 19. No person shall proceed to, be present at, or return from, any such meeting with any flag, banner, or ensign exhibiting any device, badge, or emblem, or with any drum or music, or in military array. Offenders to be imprisoned for not exceeding two years, at the discretion of the court.

Punishment.

Sheriffs-depute &c. in Scotland to have same powers as magistrates.

§ 20. Sheriffs-depute, stewards-depute, and their substitutes, justices of the peace, magistrates of royal burghs, and other inferior judges and magistrates, and high and petty constables or other peace officers in *Scotland*, shall have the same powers for putting the act in execution in *Scotland* as justices and peace officers in other parts of the United Kingdom.

Quarter sessions may subdivide large parishes and townships for the purposes of this act.

§ 21. Justices assembled at general or quarter sessions may, for the purpose of preventing tumultuous meetings, divide any parish or township having a population exceeding 20,000 inhabitants, into two or more divisions; and a registry of such divisions, describing their boundaries, shall be entered with the clerk of the peace, and a duplicate shall be transmitted to the churchwardens and overseers, or to the ministers and elders, or to the kirk session of the parish or township, to be by them kept, and copies shall be put up on the church doors of such parish or township; and each division shall, for the purposes of this act, be deemed a separate parish or township, but no such division shall contain a population less than 10,000 persons.

Proviso as to population.

Extra-parochial places.

§ 22. Extra-parochial places shall be deemed parishes or townships for the purposes of this act.

Parish meetings in St. John and St. Margaret, Westminster.

§ 23. Meetings which may be held under this act may be held in the parishes of *Saint John* and *Saint Margaret, Westminster*, within a mile from the gate of *Westminster-hall;* provided they are not held in *Old* or *New Palace-yard* during the sitting of parliament, notwithstanding 57 *G.* 3. *c.* 19.

Act not to legalise meetings now against law.

§ 24. Act not to make lawful any notice or meeting, or any thing done thereat, or the attendance of any person which would have been otherwise contrary to law.

§ 25. Offences within this act, which were before indictable, may still be prosecuted as before, unless the offender has been convicted or acquitted under this act.

60 G.3. c.6. Proviso for prosecutions otherwise than under this act.

§ 26. Every house, room, field, or other place in which any person shall publicly read, or any lecture or discourse shall be publicly delivered, or any public debate had on any subject for the purpose of raising money or other valuable thing from the persons admitted, or to which any person shall be admitted for money, or by ticket delivered for money or other valuable thing, or in consequence of paying or having paid, or having agreed to pay money or other valuable thing, or where money or other valuable thing shall be received from any person admitted under any pretence, or by any contrivance whatever, shall be deemed a disorderly house or place, unless previously licensed as hereinafter mentioned; and the person by whom such house, &c. shall be opened or used for any of such purposes shall forfeit 100*l.* for every day or time the same shall be so opened or used, to any one who will sue for the same, and be otherwise punished as in cases of disorderly houses; and every person managing or conducting the proceedings, or acting as moderator, president, or chairman, or debating, publicly reading, or delivering any discourse or lecture; and every person who shall pay, collect, or receive, or agree to pay or receive money or thing for the admission of any person to such house, &c. or deliver or receive any such ticket, knowing such house, &c. to be opened or used for any such purpose, shall forfeit 20*l.*

Places for lectures or debates (unless previously licensed) deemed disorderly places, and persons punishable for paying or receiving money. Opening such places. Penalty. Collecting or giving money for admission. Penalty.

§ 27. Every person who shall act as having the management of any such house, &c. to be deemed the person by whom the same is opened or used, and be liable to be prosecuted, notwithstanding he be not the real owner or occupier.

Person acting as manager. Punishment.

§ 28. Any justice of the peace of any county, stewartry, city, borough, town, or place, who shall by information on oath have reason to suspect that any house, &c. or any part thereof, is opened or used contrary to this act, may demand to be admitted; and if he shall be refused admittance, such house, &c. shall be deemed a disorderly house or place, and every person refusing admittance shall forfeit 20*l.*

Magistrates may demand admission to unlicensed places. Refusing admittance. Penalty.

§ 29. Two justices of the county, riding, division, stewartry, borough, town, or place, where any house, room, or other building, shall be intended to be opened for any of the purposes aforesaid, may by writing under their hands and seals, at quarter or general sessions, or at any special session to be held for the purpose, grant a licence to any person to open such house, &c. for the purpose of delivering for money any public reading, lectures, or discourses, or of holding debates on any subjects, the same being clearly expressed in the licence, (for which 1*s.* only shall be paid,) the same to be in force for one year, or for any less time to be specified; and which the justices at quarter or general sessions may revoke by order, a copy whereof shall be served on the person to whom the licence was granted, or left at the house, &c. for which the licence was granted, and thereupon the licence shall cease.

Two justices may license places for lectures. Fee for licence. Sessions may revoke same.

§ 30. Any justice as aforesaid may, at the time of any public reading, lecture, or debate, or at the time appointed for the same,

Justices may inspect licensed places.

60 G.3. c.6.

Refusing admittance.

Penalty.

demand to be admitted into such house, &c.; and if refused such house, &c. shall be deemed disorderly within the meaning of this act, and the person refusing admittance shall forfeit 20*l.* to any one who shall sue for same.

Proviso for lectures at universities, inns of court, Gresham college, E. I. college, &c. &c.

Payments to schoolmasters, &c.

§ 31. Act not to extend to any lecture or discourse delivered in the universities by any member thereof, or person authorized by the proper officers, or to readings in the hall of any inns of court or chancery, by any person authorized by the benchers, or by the professors in *Gresham* College, or by the professors in the *East India* Company's College, or their military seminary, or to any society incorporated by charter or authority of parliament; and no payment to a schoolmaster in respect of any lectures delivered for the instruction of the youth under his charge shall be deemed a payment within this act.

Forfeiture of licence in case of seditious, &c. lectures.

§ 32. Two justices as aforesaid, upon evidence on oath that any licensed house, &c. is commonly used for the purpose of public reading, or delivering lectures, or discourses of seditious, irreligious, or immoral tendency, may adjudge the licence forfeited, and thereupon it shall cease.

Recovery of penalties exceeding 20*l.*;

not exceeding 20*l.*

If penalty not paid, distress.

Imprisonment.

Limitation of prosecutions.

§ 33. Penalties above 20*l.* incurred in *England* or *Ireland* may be recovered by actions of debt in any of the king's courts of record at *Westminster*, or in *Dublin*, and in *Scotland* in the court of session; and it shall be sufficient to declare in *England*, or *Ireland*, or conclude in *Scotland*, according to the form prescribed, and plaintiff or pursuer shall have full costs and penalties: not exceeding 20*l.* may be recovered before any justice of the county, &c. in which the same shall be incurred, or the offender shall happen to be, in a summary way; and if not forthwith paid such justice shall by warrant of distress levy the same, with costs of the distress; and if no sufficient distress can be had, shall commit the offender to the common gaol or house of correction for not exceeding 6 calendar months, nor less than 3. And see stat. 5 *G.* 4. *c.* 18. tit. Distress. Prosecutions and actions shall be commenced within 3 calendar months after penalty incurred. (See § 38.)

Penalties how disposed of.

§ 34. Penalties recovered either by action, or in a summary way, shall be disposed of, one moiety to plaintiff or informer, the other to the king.

§ 35. The justice or justices by or before whom any offender shall be convicted under this act shall cause the said conviction to be made out in the manner and form following, or in any other form of words to the like effect, *mutatis mutandis;* that is to say,

Form of conviction.

BE it remembered, that on this ——— *day of* ——— *in the* ——— *year of the reign of* ———, A.B. *of* ——— *is duly convicted before* [*me*, or *us*, as the case may be,] ——— *of his majesty's justices of the peace for* ———, *in pursuance of an act passed in the sixtieth year of the reign of king* George *the third, intituled* An act [set forth the title of the act], *for that the said* A. B., *after the passing the said act, on* ——— *at* ———, *did contrary to the said act* [here specify the offence against the act, as the case may be]; *wherefore* [*I*, or *we*, as the case may be,] *the said* ——— *do adjudge that the said* A. B. *do pay the sum of* ——— *as a penalty for his said offence.*

And see 5 *G.*4. *c.*23. § 1. tit. Conviction.

§ 36. Action against justice, or other person in *England* or *Ireland*, for any thing done in pursuance of this act, shall be commenced within six calendar months after the fact committed, and the venue shall be laid in the proper county, and defendant may plead general issue; and if such action shall be out of time, or the venue improperly laid, the jury shall find for defendant, and in case of judgment against plaintiff, defendant shall have double costs.

60 G. 3. c. 6. Limitation of actions for things done in pursuance of act. General issue. Double costs.

§ 37. Similar provision as to the time of bringing action in *Scotland;* and that the same shall be brought in the court of session, with similar provisions in favor of defendant as to pleading and evidence, and his recovering double costs.

Like limitation in Scotland.

§ 38. Prosecutions under this act shall be commenced within 6 calendar months after offence committed. (See § 33.)

Limitation of prosecutions.

§ 40. Act to commence in *London* and within 20 miles, from the day after the day of passing (*a*) the act, and in other parts of the kingdom from 10 days after; and to continue for 5 years, and until the end of the then next session of parliament.

By stat. 60 *G.* 3. *c.* 1. intituled "*An act to prevent the training of persons to the use of arms, and to the practice of military evolutions and exercise,*" [11th *December*, 1819,] § 1. After reciting that "whereas in some parts of the U. K. men clandestinely and unlawfully assembled have practised military training and exercise, to the great terror and alarm of H. M.'s peaceable and loyal subjects, and the imminent danger of the public peace;" it is enacted, "that all meetings and assemblies of persons for the purpose of training or drilling themselves, or of being trained or drilled to the use of arms, or for the purpose of practising military exercise, movements, or evolutions, without any lawful authority from H. M., or the lieutenant, or two justices of the peace of any county or riding, or of any stewartry, by commission or otherwise, for so doing, shall be and the same are hereby prohibited, as dangerous to the peace and security of H. M.'s liege subjects and of his government; and every person who shall be present at or attend any such meeting or assembly, for the purpose of training and drilling any other person or persons to the use of arms, or the practice of military exercise, movements, or evolutions, or who shall train or drill any other person or persons to the use of arms, or the practise of military exercise, movements, or evolutions, or who shall aid or assist therein, being legally convicted thereof, shall be liable to be transported for any term not exceeding seven years, or to be punished by imprisonment not exceeding two years, at the discretion of the court in which such conviction shall be had; and every person who shall attend or be present at any such meeting or assembly as aforesaid, for the purpose of being, or who shall at any such meeting or assembly be trained or drilled to the use of arms, or the practice of military exercise, movements, or evolutions, being legally convicted thereof, shall be liable to be punished by fine and imprisonment not exceeding two years, at the discretion of the court in which such conviction shall be had."

60 G. 3. c. 1. Meetings and assemblies of persons for the purpose of being trained, or of practising military exercise, prohibited. Punishment.

§ 2. Enacts, "that it shall be lawful for any justice of the peace, or for any constable or peace officer, or for any other per-

Persons so assembled may be detained and

(*a*) The act passed 24th *December*, 1819.

60 G. 3. c. 1.

son acting in their aid or assistance, to disperse any such unlawful meeting or assembly as aforesaid, and to arrest and detain any person present at, or aiding, assisting, or abetting any such assembly or meeting as aforesaid; and it shall be lawful for the justice of the peace who shall arrest any such person, or before whom any person so arrested shall be brought, to commit such person for trial for such offence, under the provisions of this act, unless such person can and shall give sufficient bail for his appearance at the next assizes or general or quarter sessions of the peace, to answer to any indictment which may be preferred against him for any such offence against this act, in *England* and *Ireland;* and in *Scotland* every such person shall be arrested and dealt with according to the law and practice of that part of the U. K. in the case of a bailable offence."

required to give bail, and prosecuted.

Sheriffs-depute, &c. in Scotland to have the same powers as magistrates in England.

§ 3. Enacts, "that the sheriffs-depute and their substitutes, stewards-depute and their substitutes, justices of the peace, magistrates of royal burghs, and all other inferior judges and magistrates, and also all high and petty constables, or other peace officers of any county, stewartry, city, or town within that part of the U. K. called *Scotland*, shall have such and the same powers and authorities for putting this present act in execution within *Scotland*, as the justices of the peace and other magistrates and peace officers and constables aforesaid respectively have, by virtue of this act, within and for other parts of the U. K."

Offenders may be indicted, if not prosecuted under this act.

§ 4. Provides and enacts, "that nothing in this act contained shall extend to prevent any prosecution, by indictment or otherwise, for any thing which shall be an offence within the intent and meaning of this act, and which might have been so prosecuted if this act had not been made, unless the offender shall have been prosecuted for such offence under this act, and convicted or acquitted of such offence."

Limitation of actions.

§ 5. Enacts, "that any action or suit which shall be brought or commenced against any justice or justices of the peace, constable, peace officer, or other person or persons, in that part of *G. B.* called *England* or in *Ireland*, for any thing done or acted in pursuance of this act, shall be commenced within 6 calendar months next after the fact committed, and not afterwards; and the venue in every such action or suit shall be laid in the proper county where the fact was committed, and not elsewhere; and the defendant or defendants in every such action or suit may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon; and if such action or suit shall be brought or commenced after the time limited for bringing the same, or the venue shall be laid in any other place than as aforesaid, then the jury shall find a verdict for the defendant or defendants; and in such case, or if the jury shall find a verdict for the defendant or defendants upon the merits, or if the plaintiff or plaintiffs shall become nonsuit, or discontinue his, her, or their actions after appearance, or if upon demurrer judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall have double costs, which he or they shall and may recover in such and the same manner as any defendant can by law in other cases."

General issue may be pleaded.

Double costs.

Limitation of actions, &c. in Scotland.

§ 6. Enacts, "that every action or suit which shall be brought or commenced against any person or persons in *Scotland* for any

thing done or acted in pursuance of this act, shall in like manner be commenced within six calendar months after the fact committed, and not afterwards, and shall be brought in the court of session in *Scotland;* and the defender or defenders may plead that the matter complained of was done in pursuance of this act, and may give this act and the special matter in evidence; and if such action or suit shall be brought or commenced after the time limited for bringing the same, then the same shall be dismissed; and in such case, or if the defender or defenders shall be assoilzied, or the pursuer or pursuers shall suffer the action or suit to fall asleep, or a decision shall be pronounced against the pursuer or pursuers upon the relevancy, the defender or defenders shall have treble costs or expences, which he or they shall and may receive in such and the same manner as any defender can by law recover costs or expences in other cases." 60 G. 3. c. 1. Treble costs.

§ 7. Provides and enacts, "that no person shall be prosecuted by virtue of this act for any thing done or committed contrary to the provisions hereinbefore contained, unless such prosecution shall be commenced within 6 calendar months after the offence committed." Prosecutions to be commenced within six calendar months after offences.

See stat. 41 *G.* 3. (U. K.) *c.* 78. § 2. empowering two justices to make an allowance to high constables for extraordinary expences incurred in cases of riot, &c. Vol. I. *tit.* Constable, p. 582. 41 G. 3. (U. K.) c. 78.

A. Indictment for a Riot. A.

County of ——— } *THE jurors for our lord the king upon their oath present, that* A. O., *late of the parish of* ———, *in the county of* ———, *yeoman,* B. O., *late of the same, yeoman,* C. O., *late of the same, yeoman, and divers other persons (to the jurors aforesaid as yet unknown) on the* ——— *day of* ———, *in the* ——— *year of the reign of* ———, *at the parish aforesaid, in the county aforesaid, with force and arms, unlawfully, riotously, and routously, did assemble and gather together to disturb the peace of our said lord the king; and so being then and there assembled and gathered together, in and upon one* A. I., *in the peace of God and of our said lord the king then and there being, unlawfully, riotously, and routously, did make an assault, and him the said* A. I. *then and there unlawfully, riotously, and routously, did beat, wound, and ill treat, and other wrongs to the said* A. I. *then and there unlawfully, riotously, and routously did, to the great damage of the said* A. I. *and against the peace of our said lord the king, his crown, and dignity.*

B. Record of a Riot on View. B.

County of ——— } *BE it remembered, that on the* ——— *day of* ———, *in the* ——— *year of the reign of* ———, *we* J. P. *and* K. P., *esquires, two of the justices of our said lord the king, assigned to keep the peace in the said county, and* A. S. *knight, sheriff of the said county, at the complaint and request of* A. I. *of* ———, *in the county aforesaid, yeoman, in our proper persons have come to the mansion house of him the said* A. I. *in* ——— *aforesaid, and then and there do find* A. O. *of* ———, *yeoman,*

B. O. *of* ——, *yeoman*, C. O. *of* ——, *yeoman, and other malefactors and disturbers of the peace of our said lord the king to us unknown, in a warlike manner arrayed, to wit, with clubs, swords, and guns, unlawfully, riotously, and routously assembled, and the same house besetting, many evils against him the said* A. L. *threatening, to the great disturbance of the peace of our said lord the king, and terror of his people, and against the form of the statute in that case made and provided: And therefore we the aforesaid* J. P., K. P., *and* A. S., *the aforesaid* A. O., B. O., *and* C. O., *do then and there cause to be arrested, and to the next gaol of our said lord the king in the county aforesaid to be conveyed, by our view and record of the unlawful assembly, riot, and rout aforesaid convicted, there to remain every and each of them respectively, until they shall severally and respectively have paid to our said lord the king the several sums of* 10*l. each, which we do impose upon them and every of them separately for their said offence. In testimony whereof to this our present record we do put our seals. Dated at* ——, *aforesaid, the day and year aforesaid.*

C.

C. Commitment of the Rioters upon View.

County of —— } J. P. *and* K. P., *esquires, two of the justices of our said lord the king, assigned to keep the peace within the said county, and* A. S., *knight, sheriff of the said county; To the keeper of the gaol of our said lord the king at* ——, *in the said county, and to his deputy and deputies there, and to every of them greeting: Whereas upon complaint made unto us by* A. I. *of* ——, *yeoman, we did this present* —— *day of* ——, *go to the house of the said* A. I., *at* ——, *aforesaid, and there did see* A. O. *of* ——, *yeoman*, B. O. *of* ——, *yeoman*, C. O. *of* ——, *yeoman, and other malefactors to us unknown, assembled together in an unlawful, routous, and riotous manner, to the terror of the people, and against the peace of our said lord the king, and against the form of the statute in that case made and provided: We do therefore send you by the bringers hereof the bodies of the said* A. O., B. O., *and* C. O., *convicted of the said riot, rout, and unlawful assembly, by our own view, testimony, and record: commanding you in the name of our said lord the king to receive them into the said gaol, and them and every of them respectively there safely to keep until they and every of them shall respectively pay to our said lord the king the several and respective sums of* 10*l. each, which we have set and imposed upon them, and each and every of them separately for the said offence. Given under our hands and seals at* —— *aforesaid, in the county aforesaid, the day and year aforesaid.*

D.

D. Precept to summon a Jury.

County of —— } J. P. *and* K. P., *esquires, two of the justices of our lord the king, assigned to keep the peace in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed; To the sheriff of the said county, greeting: On the behalf of our said lord*

the king, we command you, that you cause to come before us at ———, in the county aforesaid, on the ——— day of ——— next ensuing, twenty-four honest and lawful men of the county aforesaid, every one of which to have lands and tenements within the said county to the yearly value of 20s. *of charter land or of freehold, or* 26s. 8d. *of copyhold, or both, over and above all charges, to enquire for our said lord the king, and for our indemnity in this behalf upon their oath, of certain riots, routs, and unlawful assemblies at ———, in the county aforesaid, lately committed, as it is said; and that you return upon every person so by you to be impannelled* 20s. *of issues at the aforesaid day, to be by them respectively forfeited if they shall not appear and be sworn to enquire of the premises at the same time and place. And this you shall in nowise omit, on pain of* 20l. *Given under our hands and seals at ——— aforesaid, in the county aforesaid, the ——— day of ———, in the ——— year of the reign of ———.*

Jurors' Oath.

YOU shall true enquiry and presentment make of all such things as shall come before you concerning a riot, rout, and unlawful assembly, said to have been lately committed at ———, in this county; you shall spare no one for favour or affection, nor grieve any one for hatred or ill will, but proceed herein according to the best of your knowledge, and according to the evidence that shall be given to you: So help you God.

The oath which your foreman hath taken on his part, you and every of you shall well and truly observe and keep on your parts: So help you God.

The Inquisition, Indictment, or Presentment of the Jury.

County of ——— } *AN inquisition for our lord the king, indented and taken at ———, in the county aforesaid, the ——— day of ———, in the ——— year of the reign of ———, by the oath of ——— honest and lawful men of the county aforesaid, before* J. P. *and* K. P., *esquires, justices of our said lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors, in the said county committed, who say upon their oath aforesaid that* A. O. *of ———, yeoman,* B. O. *of ———, yeoman,* C. O. *of ———, yeoman, together with other malefactors and disturbers of the peace of our said lord the king, to the jurors aforesaid as yet unknown, on the ——— day of ———, now last past, at ———, aforesaid, in the county aforesaid, with force and arms, to wit, with clubs, swords, and guns, unlawfully, routously, and riotously did assemble, to disturb the peace of our said lord the king; and so being then and there assembled and gathered together, the mansion-house of* A. I., *yeoman, at ——— aforesaid, unlawfully, routously, and riotously did enter, and in and upon him the said* A. I. *then and there unlawfully, routously, and riotously did make an assault, and him the said* A. I. *then and there unlawfully, routously, and riotously did beat, wound, and ill treat, in disturbance of the peace of*

our said lord the king, and to the terror of his people, and against the form of the statute in such case made and provided.

We whose names are hereunto set, the abovesaid jurors, do find this inquisition true.

A. B.
C. D. &c.

We the justices abovesaid do hereby impose the fines here under-written, on the aforesaid offenders.

A. O. 20*l.*
B. O. 20*l.*
C. O. 20*l.*

E. Form of Adjudication of Forfeiture of Licence to sell Ale, &c., by stat. 39 G. 3. *c.* 79.

County of ——— to wit. } *BE it remembered, that on this* ——— *day of* ———, *in the* ——— *year of the reign of his present majesty,* A. O. *of* ———, *being a person licensed to sell* [as the case may be], *is duly convicted before us, two of his majesty's justices of the peace for the county of* ———, *in pursuance of an act of the thirty-ninth year of the reign of* ——— [set forth the title of the act (*a*)], *for that he the said* A. O. *of* ———, *at* ———, *did permit a meeting of a society* [describe the society], *which is an unlawful combination and confederacy within the intent and meaning of the said act, to be held at* ———, *being the house* [as the case may be] *of the said* A. O., *wherein the said* A. O. *is licensed to sell* [as the case may be]: *Wherefore we the said* ——— *do adjudge and declare that the licence* [or *licences,* as the case may be]*: is* [or *are*] *for such offence, forfeited. Given under our hands and seals this* ——— *day of* ———, *in the year of our lord* ———, *and in the* ——— *year of the reign of his majesty king* ———.

F. Form of a Conviction of an unlawful Combination and Confederacy, by stat. 39 G. 3. *c.* 79.

County of ——— to wit. } *BE it remembered, that on this* ——— *day of* ———, *in the* ——— *year of the reign of* ———, A. O. *of* ——— *is duly convicted before me,* [or *us*] ——— *of his majesty's justices of the peace for* ——— *in pursuance of an act of the thirty-ninth year of the reign of king* George *the third,* [set forth the title of the act,] *for that he the said* A. O., *after the passing of this act, to wit, on the* ——— *day of* ———, *at* ———, *did, contrary to the said act, become a member of* [or, as the case may be, *act as a member of, or maintain correspondence or intercourse with, or by contribution of money or otherwise, abet or support*] *a society* [describing the society], *which society is an unlawful combination and confederacy within the intent and meaning of the said act: Wherefore I* [or *we*] *the said* ——— *do adjudge that he the said* A. O. *do pay* [or *be im-*

(*a*) "An act for the more effectual suppression of societies established for seditious and treasonable purposes; and for better preventing treasonable and seditious practices."

prisoned] *as a penalty for his offence, in pursuance of the said act. Given under my hand and seal* [or, *our hands and seals*,] *this* ——— *day of* ———, *in the year of our Lord* ———, *and in the* ——— *year of the reign of his majesty king* ———.

G. General Form of a Conviction, by stat. 39 *G.* 3. *c.* 79.

County of ——— to wit. } *BE it remembered, that on this* ——— *day of* ———, *in the* ——— *year of the reign of* ———, A. O. *of* ——— *is duly convicted before me* [or *us*] ——— *of his majesty's justices of the peace for* ———, *in pursuance of an act of the thirty-ninth year of the reign of king* George *the third* [set forth the title of the act] (*a*), *for that the said* A. O., *on the* ——— *day of* ———, *at* ———, *did, contrary to the said act* [as the case may be, specifying any offence against the act, and the time and place when and where the same was committed]: *Wherefore I* [or *we*] *the said* ——— *do adjudge that he the said* A. O. *do pay the sum of* ——— *as a penalty for his offence, in pursuance of the said act. Given under our hands and seals this* ——— *day of* ———, *in the year of our Lord* ———, *and in the* ——— *year of the reign of his majesty king* ———.

H. Form of Conviction of an unlawful Combination and Confederacy, by stat. 57 *G.* 3. *c.* 19.

——— to wit. } *BE it remembered, that on this* ——— *day of* ———, *in the* ——— *year of the reign of* ———, A. B. *of* ——— *is duly convicted before me* [or *us*] ——— *of his majesty's justices of the peace for* ———, *in pursuance of an act of the fifty-seventh year of the reign of king* George *the third,* [set forth the title of the act,] *for that the said* A. B., *after the passing of the said act, to wit, on the* ——— *day of* ———, *at* ———, *did, contrary to the said act, become a member of* [or, as the case may be, *act as a member of, or maintain a correspondence or intercourse with, or by contribution of money or otherwise abet or support*] *a society* [describing the society], *which society is an unlawful combination and confederacy within the intent and meaning of the said act: Wherefore I* [or *we*] *the said* ——— *do adjudge, that he the said* A. B. *do pay* ——— [or, *be imprisoned*,] *as a penalty for his offence in pursuance of the said act. Given under my hand and seal* [or, *our hands and seals*,] *this* ——— *day of* ———, *in the year of our Lord* ———, *and in the* ——— *year of the reign of his majesty king* ———.

I. Form of Adjudication of Forfeiture of Licence to sell Ale, &c., by stat. 57 *G.* 3. *c.* 19.

——— to wit. } *BE it remembered, that on this* ——— *day of* ———, *in the* ——— *year of the reign of his present majesty,* A. B. *of* ———, *being a person licensed to sell* [as the case may be], *is duly convicted before us, two of his majesty's justices of the peace for the county of* ———, *in pursuance of an act of the fifty-seventh year of the reign of king* George *the third,*

(*a*) See *note* in preceding page.

[set forth the title of the act] *for that he the said* A. B., *on* ———, *at* ———, *did permit a meeting of a society* [describe the society], *which is an unlawful combination and confederacy within the intent and meaning of the said act, to be held at* ——— *being the house* [as the case may be] *of the said* A. B., *wherein he the said* A. B. *is licensed to sell* [as the case may be]: *Wherefore we the said* ——— *do adjudge and declare, that the licence* [or *licences*, as the case may be,] *is* [or *are*] *for such offence forfeited. Given under our hands and seals this* ——— *day of* ———, *in the year of our Lord* ———, *and in the* ——— *year of the reign of his majesty king* ———.

K. Form of Conviction for Offences subject to pecuniary Penalties, by stat. 57 *G.* 3. *c.* 19.

BE it remembered, that on this ——— *day of* ———, *in the* ——— *year of the reign of* ———, A. B. *of* ———, *is duly convicted before me* [or *us*] ——— *of his majesty's justices of the peace for* ———, *in pursuance of an act of the fifty-seventh year of the reign of king* George *the third* [set forth the title of the act], *for that the said* A. B., *after the passing of the said act, on* ———, *at* ———, *did, contrary to the said act* [here specify any offence against the act, as the case may be]: *Wherefore I* [or *we*] *the said* ——— *do adjudge that the said* A. B. *do pay the sum of* ——— *as a penalty for this offence in pursuance of the said act.*

Rivers and Navigation.

[1 G. 2. st. 2. c. 19. — 8 G. 2. c. 20. — 27 G. 2. c. 16. — 19 G. 2. c. 22. — 24 G. 2. c. 45. — 4 G. 3. c. 12. — 54 G. 3. c. 159. — 1 G. 4. c. 115. — 1 G. 4. c. 53.]

1 G. 2. st. 2. c. 19. Maliciously demolishing locks, sluices, &c on navigable rivers, felony and transportation.

BY stat. 1 *G.* 2. *st.* 2. *c.* 19. § 2. "If any person or persons shall either by day or night wilfully and maliciously break down or demolish any lock, sluice, or flood-gate, erected or to be erected by authority of parliament, *upon any navigable river, for preserving or securing the navigation thereof,* and shall be lawfully convicted of the same respectively upon indictment before any justices of assize, oyer and terminer, or gaol delivery for the county, &c. every such person and persons so offending, and being thereof lawfully convicted, shall be adjudged guilty of felony, and subject to the like pains and penalties as in cases of felony; and the court before whom such person or persons shall be tried shall have authority to transport such felons for seven years, in like manner as other felons," &c.

Returning from transportation.

It seems that by a reasonable construction of a subsequent statute, 5 *G.* 2. *c.* 33. § 2. persons sentenced to transportation under stat. 1 *G.* 2. *st.* 2. *c.* 19., and returning into *G. B.* or *Ireland* before the expiration of the term of seven years, are liable to suffer

death as felons, without benefit of clergy. See 2 *East's P. C.*, 1088. 2 *Russ.* 1714.

As to breaking down, &c. any bank, mill, engine, flood-gate, or sluice erected for the purposes of the draining, &c. the great level of the fens, see stat. 4 *G.* 4. *c.* 46. § 1. Vol. I. tit. **Bedford Level.**

Stat. 8 *G.* 2. *c.* 20. § 1. reciting the stats. 1 *G.* 2. *st.* 2. *c.* 19. and 5 *G.* 2. *c.* 33., and that "the provisions for punishing *such* offenders had been found insufficient, for rendering the *said* acts more effectual," enacts, "that if any person or persons whatsoever, after the 15th of *May*, 1735, shall either by day or night wilfully *or* maliciously pull down, pluck up, throw down, level, or otherwise destroy any lock, sluice, flood-gate, or other works, on any navigable river erected or to be erected by authority of parliament; or forcibly rescue any person or persons, being lawfully in custody of any officer or other person for any of the offences before mentioned; that then and in any of the said cases every person so offending, being thereof lawfully convicted, shall suffer death, as in cases of felony, without benefit of clergy." 8 G. 2. c. 20.

But by stat. 1 *G.* 4. *c.* 115. § 1. so much of stat. 8 *G.* 2. *c.* 20. above recited, as inflicts the punishment of death in the cases aforesaid, is repealed; and by § 2. it is enacted, that all persons duly convicted of any of the offences hereinbefore recited, which were punishable with death under the above-recited act, shall be liable to be transported beyond the seas for life, or for such term, not less than seven years, as the court before which such person shall be convicted shall adjudge; or shall be liable, in case the said court shall think fit, to be imprisoned only, or imprisoned and kept to hard labour in the common gaol, penitentiary house, or house of correction, for any term not exceeding seven years. 1 G. 4. c. 115. reciting stat. 8 G. 2. c. 20. Instead of punishment of death, offenders shall be liable to transportation, &c.

By stat. 8 *G.* 2. *c.* 20. § 2. Persons wilfully and maliciously drawing up any flood-gate, fixed or made in any wear or lock made or to be made, &c. upon any navigable river, for preserving the navigation thereof, are subject to imprisonment and hard labour for a month, upon a summary conviction before two justices of the peace. 8 G. 2. c. 20.

By § 3. "Every offence aforesaid done contrary to this act shall and may be enquired of, examined, tried, and determined in any adjacent county within that part of *G. B.* called *England*, in such manner and form as if the fact had been therein committed." Trial.

By § 5. Offenders out of prison discovering and convicting others guilty of the said felonies shall be pardoned. Pardon.

By § 6, &c. A conditional remedy is given to recover damages against the hundred.

The several statutes here mentioned having been suffered to expire were afterwards revived and continued, and ultimately made perpetual by stat. 27 *G.* 2. *c.* 16. 2 *East's P. C.* 1090.

A few years afterwards we find the following law: —

Stat. 4 *G.* 3. *c.* 12. § 5. reciting that "the laws then in being were not sufficient for the preservation of the banks, flood-gates, sluices, and other works belonging to rivers and streams made navigable by act of parliament, and for maintaining the navigation on *such* rivers and streams," enacts, "that from and after the passing of this act, if any person or persons shall wilfully *or* 4 G. 3. c. 12. Transportation.

4 G.3. c.12. maliciously break, throw down, damage, or destroy any banks, flood-gates, sluices, or other works; or open or draw up any flood-gate or flood-gates, or do any other wilful hurt or mischief to any *such* navigation, so as to obstruct, hinder, or prevent the carrying on, completing, supporting, or maintaining such navigation; every such person or persons shall be adjudged guilty of felony, and the court before whom such shall be tried and convicted shall have authority to order such person or persons to be transported for seven years;" and see 2 *East's P. C.* 1090.

19 G.2. c.22. Filling up havens. By stat. 19 *G.*2. *c.*22. § 1, 2. 6. If any person, acting as master of a ship or vessel shall cast out, throw out, or unlade, or there shall be cast out, &c. of any vessel, &c. being within any haven, port, road, channel, or navigable river, any ballast or rubbish, but only on the land where the tide never flows, any one justice near the place may summon or issue his warrant to apprehend and bring before him the master or owner, or other person acting as such, against whom the information shall be made, and upon due proof made, either by confession of the party offending, or on view of such justice, or oath of one witness, that any ballast or rubbish hath been cast out, &c. the master or person acting as such shall be adjudged the offender, and shall forfeit not above 5*l.* nor under 50*s.*, half to the informer, and half to the poor of the parish or place where such conviction shall be pronounced; to be levied by distress of the goods of the person so convicted, or of the ship or tackle; and the same, if not redeemed in five days, to be sold, rendering the overplus, if any be, after demand in writing, charges of distress and sale being first deducted; for want of sufficient distress, to be committed to the common gaol of the county, city, or town corporate, or to the house of correction, or to the house of correction of the county where the conviction shall be, for two months, or till payment of the penalties, or so much thereof for which the commitment shall be.

§ 3. And as soon as any vessel shall be sunk, stranded, or run ashore, in any harbour, port, channel, or navigable river, or be brought in, or be there in a shattered condition, and permitted to remain there, and the owner or master, or some other person having or pretending to have any property therein, or any other person by their order, or assent, or privity, shall begin to take down, or carry away any of the rigging or tackle, or if there shall not be any person to take care of such vessel; any one justice of the county or place, or near which such accident or offence shall happen, shall on information thereof summon the owner, or other person having, or pretending to have, the command or power over such vessel, or issue his warrant to bring him before him; and on conviction shall issue his warrant for seizing and removing such vessel, and also the rigging and tackle thereof, in such manner as he shall order and direct: and if such owner or other person shall not within five days give satisfactory security to the justice to clear the harbour, &c. of such vessel, and of all the wreck and parts thereof, and pay the charges of seizing, removing, and disposing of the vessel and furniture, then the justice shall cause the hulk and tackle to be sold, and with the money pay the charges of clearing the place where the vessel shall lie, and of seizing, removing, and selling the same, rendering the overplus to the owner of the manor where the same shall happen.

§ 4. Justices may act herein though rated to the poor where the conviction shall be pronounced. 19 G.2. c.22.

§ 5. Conviction to be final and not removable.

§ 7. But nothing herein shall extend to affect the right of any lord of a manor near such haven, &c., or of any other person having such rights, or having right to any fishery, manufactory, or royalty; nor to any materials used in building, &c. any quay, &c. on the banks, &c. of any river, &c.

§ 8. Saves the former jurisdictions, rights, or remedies to punish any nuisances to be done in any haven, port, road, channel, or navigable river.

Unloading ballast from a ship into a machine or vessel, called a hopper, in a navigable river, with intent to carry and cast it into the high and open sea, and carrying it accordingly and casting it out of the said hopper, when the water was more than fourteen fathom deep, at a distance from any port, haven, channel, or navigable river, is an offence against the positive enactment of 19 *G.* 2. *c.* 22. and subjects the offender to the penalty of § 1. *Brucklesbank* v. *Smith*, 2 *Burr.* 656.

By stat. 54 *G.* 3. *c.* 159. § 1. stats. 9 *G.* 3. *c.* 30. and 10 *Ann. c.* 17. as far as they relate to the harbour moorings of the navy, and stat. 51 *G.* 3. *c.* 73., are repealed. 54 G.3. c.159.

§ 2. The admiralty may establish regulations for the preservation of the king's moorings, and for mooring merchant ships. Such regulations to be published in the Gazette, and to be hung up conspicuously in custom-houses, &c.

§ 3. No private ships to fasten to H.M.'s moorings, under penalty of not exceeding 10*l.* for each tide.

§ 4. Power given to harbour-master and other officers to unmoor and remove private ships of war or merchant ships, &c. Penalty of 10*l.* on owner, master, &c. of private ships, neglecting and refusing to remove after one hour's notice.

§ 5. Notice to be given when H.M.'s moorings are hooked.

§ 6. Places to be appointed for breaming ships, and for leaving and receiving gunpowder.

§ 7, 8. Penalties on breaming ships, except at appointed places, and on keeping guns shotted.

§ 9. Power given to harbour-master and other officers to enter private ships to search for gunpowder, &c. within limits prohibited. Penalty of 10*l.* for refusing admittance to proper officers.

§ 10. None to sweep for H.M.'s stores within 100 yards of H.M.'s ships or moorings, but licensed persons, under penalty of 10*l.*

Punishing persons letting ballast or rubbish go into the sea.

§ 11. If the owner, master, or other person having the charge or command of any private ship of war, transport, or other private or merchant ship or vessel, lighter, barge, boat, or other craft whatsoever, or any person working any quarry, mine, or pit, near to the sea, or to any such harbour, haven, or navigable river as aforesaid, or any other person or persons whatsoever, shall cast, throw, empty, or unlade, or cause, or procure to be cast, thrown, emptied, or unladen, either from or out of any such ship or vessel, lighter, barge, boat, or other craft, or from the shore, any ballast, stone, slate, gravel, earth, rubbish, wreck, or filth, into any of such ports, roads, roadsteads, harbours, havens, or navigable rivers of

54 G.3. c.159. this kingdom as aforesaid, so as to tend to the injury or obstruction of the navigation thereof, or in any place or situation on shore where the same shall be liable to be washed into the sea, or into any such ports, roads, roadsteads, harbours, havens, or navigable rivers, either by ordinary or high tides or by storms or land floods; all and every such person and persons so offending shall, for every such offence, forfeit and pay a sum not exceeding the sum of 10*l.* over and besides all expences which may be incurred in removing to a proper place the said matters which may have been deposited contrary to the provisions of this act, such expenses to be recoverable in such manner and with such power of commitment on non-payment thereof, as in cases of penalties or forfeitures under this act: Provided that nothing herein contained shall extend or be construed to extend to the casting out, unlading, or throwing out of any ship or vessel, lighter, barge, boat, or other craft, any stones, rocks, bricks, lime, or other materials used or to be used in or towards the building, repairing, or keeping in repair any quay, pier, wharf, wear, bridge, or other building, or the banks or sides of any port, harbour, haven, channel, or navigable river, or any materials for repairing any highway; any thing herein contained to the contrary thereof in anywise notwithstanding.

Manner in which ships may unlade their ballast.

§ 12. And for the more effectually preventing such injuries, it is enacted, that no ship or vessel, lighter, barge, boat, or craft whatsoever, shall unlade on any part of the shore (except on some wharf properly constructed for the purpose) any ballast, stone, slate, gravel, earth, rubbish, wreck, or filth, except at the time of high water, or within two hours before or two hours after high water; and that, for every such purpose, every such ship or vessel, lighter, barge, boat, or craft, shall approach the shore, as far as the tide and the draught of water of such ship, vessel, lighter, barge, boat, or craft will admit, and shall, under no circumstances, and in no situation, deposit any of the said matters below low water mark at neap tides; and that every vessel drawing above eleven feet of water at the stern, shall unlade all such materials into some lighter, barge, or boat, as hereinbefore directed, in order that the same may be conveyed as near the shore as possible at the time of high water, as hereinbefore directed.

Ballast to be cast on shore from the side of the ship nearest to the land.

§ 13. Enacts, that all such ballast and other matter shall, in all the above-mentioned cases, be cast on shore from the side of the ship, lighter, barge, boat, or other craft, which shall be nearest to the land, and not otherwise; and every person who shall offend in any of the above particulars, shall, for every such offence, forfeit and pay a sum not exceeding the sum of 10*l.* over and above all expences which may be incurred in removing to a proper place the said matters which may have been deposited contrary to the provisions of this act, such expences to be recoverable in such manner, and with such powers of commitment on non-payment thereof, as in cases of penalties or forfeitures under this act.

§ 14. Penalty of 10*l.* for taking ballast from the shore in harbours, &c. after prohibition published in the Gazette.

§ 15. Penalty of 5*l.* for not using tarpaulins in taking in and discharging ballast.

§ 16. Admiralty may dispense with the provisions relative to ballast.

§ 17. Vessels sunk or stranded, after 28 days' refusal or neglect of owner to raise the same, may be weighed and raised under direction of harbour-master, or commissioner of the navy, and the charge of raising be paid from sale of vessel or goods on board. 54 G.3. c.159.

§ 18. Harbour-master, &c. indemnified for acts in pursuance of this act.

§ 19. On neglect of harbour-master, &c. for two months, the owner or master of the vessel may weigh and raise it.

§ 20. Commissioners of the navy, residing at any port, &c. near to the place where any offence is committed against this act, are empowered to act as justices of the peace for all the purposes of the act.

§ 21. Enacts, that all the penalties and forfeitures imposed by this act shall be sued for within 12 calendar months next after the offence or offences shall be committed, before any commissioner of the navy or justice of the peace residing at or near to the place where any such offence or offences shall be committed; all which said penalties and forfeitures shall be applied as follows; (that is to say,) one moiety thereof to the use of H. M., his heirs, and successors, and the other moiety thereof, with full costs, to be adjudged by such commissioner of the navy or justice of the peace, to the informer; and every such commissioner of the navy and justice of the peace is hereby authorized and required, upon information exhibited, or complaint made, to grant and issue his warrant in writing under his hand, to bring before them respectively such offender or offenders at the time and place in such warrant specified; and if on the conviction of the offender or offenders respectively, on his, her, or their confession, or on oath, (which oath every such commissioner of the navy and justice of the peace is hereby authorized and empowered to administer,) such penalty or forfeiture, together with such costs as aforesaid, shall not be forthwith paid, it shall be lawful for such commissioner of the navy or justice of the peace to commit any such offender or offenders to the common gaol, or house of correction for the county, city, or borough, at or near to the place where the offence or offences shall be committed, there to remain without bail or mainprise for any time not exceeding three months, unless such penalty or forfeiture and costs shall be sooner paid. Recovery of penalties.

§ 22. Commissioners of the navy residing at or near any port, &c. and justices of the peace acting in and for any district next adjoining any port, &c. where any offence is committed contrary to this act, may proceed in the execution of this act, though such offence may have been committed out of the limits of the jurisdiction of such commissioners or justices, or out of the body of any county of this realm.

§ 23. For the more easy and speedy conviction of offenders against this act, and also for the prevention of frivolous and vexatious appeals, enacts, that every commissioner of the navy and justice of the peace before whom any person shall be convicted of any offence against this act shall and may cause the conviction to be drawn up according to the following form, or in any form of words to the like effect, *mutatis mutandis;* which convic- Offenders.

54 G.3. c.159. tion shall be good and effectual to all intents and purposes, without stating the case, or the facts or evidence, in any more particular manner; (that is to say,)

Form of conviction.

BE it remembered, that on the ——— *day of* ———, *in the year of our lord* ———, A. B. *is convicted before me* ———, *one of the commissioners of the navy, or one of his majesty's justices of the peace for the* ——— *of* ———, [as the case may be,] *for that the said* A. B., *on the* ——— *day of* ———, *at* ———, *did,* [here state the offence against this act,] *contrary to the statute in such case made and provided. Given under my hand and seal the day and year first above written.*

Which conviction the said commissioner or justice shall cause to be fairly written upon parchment or paper, and returned to the next general quarter sessions of the peace for the county, division, city, town corporate, liberty, or place, where such conviction was made, to be filed by the clerk of the peace, and there to remain and be kept among the records of the same county, division, or place; and the same shall not be removed by *certiorari*, advocation, or suspension, or any other process whatsoever, into any court whatsoever.

§ 24. Penalty of 10*l.* on persons not attending, after summons, as witnesses.

§ 25. Persons wilfully and corruptly giving false evidence, or wilfully and corruptly swearing or affirming any thing false before commissioner or justice, in any matter relating to the execution of this act, declared liable to the penalties of wilful and corrupt perjury.

§ 26. Appeal given to court of quarter sessions within three months after conviction, on giving ten days' notice of such appeal, and entering into recognisance with two sureties to abide the determination of such court.

§ 27. Action or suit to be commenced within six months after offence.

§ 28. Act not to affect rights of property, privileges, jurisdictions, and powers of conservancy.

24 G.2. c.45. Stealing goods of 40*s*. value in vessels on navigable rivers.

By stat. 24 *G.* 2. *c.* 45. All and every person and persons who shall feloniously steal any goods, wares, or merchandise of the value of 40*s.* in any ship, barge, lighter, boat, or other vessel, or craft, upon any navigable river, or in any port of entry or discharge, or in any creek belonging to such river or port, or upon any wharf or quay adjacent to such river or port, or who shall be present and aiding, shall be excluded from the benefit of clergy. Vide Vol. III. *title* Larceny, § VIII. See stat. 4 *G.* 4. c. 53. p. 61.

Upon stat. 24 *G.* 2. *c.* 45. The construction is generally confined to such goods and merchandises as are usually lodged in ships, or on wharfs or quays.

Therefore where *George Grimes* was indicted on this statute for stealing a considerable sum of money out of a ship in port; though great part of it consisted of Portugal money, not made current by proclamation, but commonly current; it was ruled not

to be within the statute. *R.* v. *Grimes, Maidstone Lent Ass.* 1752. *Fost.* 79.

At the *O. B., May,* 1784, one *Pike* was tried before *Adair* Serjt. Recorder, on this statute, for stealing a quantity of deals "in a certain barge on the navigable river *Thames.*" It appeared in evidence, that as the barge with the deals, belonging to the prosecutor, was navigating down the *Thames,* the lighterman, fearful of an accident, brought it into *Limehouse* Dock, where it was moored. By the efflux of the tide it was left a-ground, and in the night the boat and the deals above the value of 40*s.* were stolen. The court held, that the offence laid was not proved within the meaning of the statute: that in the construction of statutes that take away the benefit of clergy, the law required that the fact laid in the indictment should be strictly proved; but in the present case the evidence proved that the larceny was not committed "on the navigable river *Thames,*" but upon the banks of one of its creeks: that it was true, the statute also took away the benefit of clergy from any person who should steal to the amount of 40*s.* "in any port of entry or discharge, or in any creek belonging to any navigable river, port of entry or discharge;" but this being a different branch of the act, the indictment should have charged the fact accordingly. The prisoner, therefore, was convicted only of the simple larceny. *Pike's case, O. B.* 1784. 1 *Leach,* 317. 2 *East's P. C.* 647.

Indictment for stealing deals in a barge on the Thames not proved by shewing that the barge was a-ground in a dock in a creek of the river; to which another description in the statute applies.

At *Surry Spring Ass.* 1798, *Nicholas Abrahat* was tried before *Buller* J. on stat. 24 *G.* 2. *c.* 45. for stealing five quarters of oats from a vessel on the navigable river *Thames,* the property of *J. B.,* &c. The prosecutors were corn-factors, and the prisoner was their servant, and had been employed by them many years, in superintending the unloading of corn vessels. The prosecutors having purchased 240 quarters of oats, on board a *Dutch* vessel lying on the *Surry* side of the *Thames,* of which the five quarters in question were part; while the corn-meters were in the act of unloading the oats from the *Dutch* vessel into the prosecutor's barge, the prisoner with another person came alongside in a boat, and handed 10 empty sacks on board the *Dutch* vessel, desiring that the sacks might be filled with oats and tied, saying, they were going to be put into an up-country lug-boat. He also desired that the account of the oats put into the sacks might be carried to the score, and not a separate account made of them. The rest of the oats were loaded in loose bulk into the prosecutor's barge. After the sacks were filled, the prisoner sent them away to another place, where he sold them. The prisoner had never been employed by the prosecutors to sell corn for them, nor was he authorized so to do. The jury found the prisoner guilty: but the learned Judge saved the case for the opinion of the judges; and at the ensuing Summer assizes, the prisoner received judgment of death; the judges being of opinion that the conviction was right. *Abrahat's case,* 2 *Leach,* 824. 2 *East's P. C.* 647.

A. having purchased corn on board a vessel in the Thames, sent his barge to receive it in bulk. His servant, employed by him to superintend the delivery, separates part from the rest while on board the vessel, and embezzles that part by conveying it away immediately by another boat; held larceny on stat. 24 G. 2. c. 45. for stealing from a vessel on the Thames.

By stat. 4 *G.* 4. *c.* 53., after reciting stat. 24 *G.* 2. *c.* 45., And that it is expedient that a lesser degree of punishment than that of death should be provided for the offences from which the benefit of clergy is so taken away as aforesaid, and that the same punishment should be extended in manner hereinafter mentioned:

4 G. 4. c. 53.

4 G.4. c.53.

So much of stat. 44 G.2. c.24. as takes away benefit of clergy from persons convicted of stealing in any ship repealed, and offenders liable to transportation or imprisonment.

it is enacted, that so much of the said recited act as takes away the benefit of clergy from the persons convicted of the offences hereinbefore mentioned, shall be and the same are hereby repealed; and that from and after the passing of this act (*8th July*, 1823) every person who shall be lawfully convicted of stealing any goods, wares, or merchandise in any ship, barge, lighter, boat, or other vessel or craft, upon any navigable river or canal, or in any port of entry or discharge, or in any creek belonging to any such river, canal, or port, or from any dock, wharf, or quay adjacent to any such river, canal, or port, or of procuring, counselling, aiding, or abetting any such offender, shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than 7 years; or to be imprisoned only, or to be imprisoned and kept to hard labour in the common gaol, or house of correction, for any term not exceeding 7 years.

Robbery.

§ I. *What it is.*

II. *Assaulting with Intent to rob.*
[24 H. 8. c. 5. — 7 G. 2. c. 21.]

III. *Levying Hue and Cry on a Robbery committed.*
[13 Ed. 1. st. 2. c. 1.]

IV. *Hundred when liable to answer Damages.*
[13 Ed. 1. st. 2. c. 2. — 28 Ed. 3. c. 11. — 27 Eliz. c. 13. — 29 C. 2. c. 7. — 8 G. 2. c. 16. — 22 G. 2. c. 24.]

V. *Manner of bringing the Action against the Hundred.*
[27 Eliz. c. 13. — 8 G. 2. c. 16.]

VI. *Damages how to be levied and applied.*
[27 Eliz. c. 13. — 8 G. 2. c. 16. — 22 G. 2. c. 16.]

VII. *Pardon for discovering an Accomplice.*
[4 W. 3. c. 8.]

VIII. *Principal and Accessary in Robbery.*

IX. *Punishment of Robbery.*
[22 G. 3. c. 33.]

X. *What shall be done with the Goods of which a Person is robbed.*

§ I. What it is.

Two kinds of robbery.

THERE are two kinds of robbery; from the *person*, and from the *house:* it is the former of these that is treated of under this title; the latter, *viz.* robbery from the house, belongeth to the titles Larceny and Burglary.

Robbery *is a felonious taking of money or goods, to any value, from the person of another, or in his presence, against his will, by violence, or putting him in fear.* 2 *East's P. C.* 707. Definition of robbery.

Felonious.] For to make it robbery there must be a felonious intention; and so it ought to be laid in the indictment. 1 *Hale*, 532.

Taking.] The taking must be against the will of the owner, and to constitute the crime of robbery, the property must be taken from the person either by violence *or* by putting him in fear; either of these circumstances is sufficient. But no sudden taking of a thing unawares from the person, as by snatching any thing from the head or hand, is sufficient, unless some injury be done to the person, or unless there be some previous struggle for the possession of the thing taken.

Violence.] Thus, where the prisoner, while a lady was stepping into her carriage, snatched at her diamond ear-ring, and separated it from her ear by tearing the ear entirely through; but there was no proof of the ear-ring ever having been seen in his hand, and, upon the lady's arrival at home, it was found amongst the curls of her hair; the judges, on a case reserved, were all of opinion, that there was a *sufficient taking from the person* to constitute robbery. They thought that it was sufficient, as the ear-ring was in the possession of the prisoner separate from the lady's person, though but for a moment, and though he could not retain it, but probably lost it again the same instant. *Lapier's case, O. B. May*, 1784. 1 *Leach*, 320.

So in the case of *Rex* v. *Davies* alias *Beard*, who was indicted for taking a gentleman's sword from his side *clam et secretè*, it was holden to be a robbery, because the gentleman observing that the prisoner had laid hold of his sword, laid hold of it himself at the same time, and struggled for it. *Davies's case, O. B.* 11 *Ann.* 2 *East's P. C.* 709.

Snatching an article from a man will constitute robbery, if it is attached to his person or clothes so as to afford resistance.

R. v. *Mason, O. B. October Sess.* 1820, *MS. C. C. R.* The prosecutor's watch was fastened to a steel chain which went round his neck; the seal and chain hung from his fob. The prisoner laid hold of the seal and chain, and pulled the watch from the fob, but the steel chain still secured it: by two jerks the prisoner broke the steel chain and made off with the watch. Case reserved on question, whether this was a robbery? The judges in *M. T.* 1820, were unanimous that it was, for the prisoner did not get the watch at once, he had to overcome the resistance the steel chain made, and actual force was used for that purpose.

Against the will.] In the case of *M'Daniel, Berry, Eagan*, and *Salmon*, (*Foster*, 121. 19 *Howell's State Trials*, 746.) it appeared that all the prisoners and one *Thomas Blee*, in order to obtain to themselves the rewards (*a*) given by act of parliament for apprehending robbers, agreed that *Blee* should procure two persons to commit a robbery on the prisoner *Salmon*; and that in pursuance of this agreement, and with the privity of all the prisoners, *Blee* procured *Ellis* and *Kelly*, two strangers, to go Case of M'Daniel and others.

(*a*) Now abolished by stat. 58 *G*.3. *c*.70. See Vol. II. p. 397.

with him to *Deptford* in order to steal linen, but did not inform them of the intended robbery; that they went with *Blee* to *Deptford*, and the prisoner *Salmon* being waiting there in pursuance of the agreement, they robbed him of the money and goods mentioned in the indictment. This case was argued before all the judges, who were unanimously of opinion that, as the goods were taken from *Salmon* in pursuance of the agreement before mentioned, in legal construction he was not robbed at all, since it is of the essence of robbery, that the goods be taken against the will of the owner; although the circumstance of putting in fear is perhaps not necessary to be inserted in the indictment, at least it need not to be strictly proved, for if a man be knocked down without any previous warning, and thereby rendered insensible, or if he manfully resist and be overpowered without being under any fear at all, it is not the less robbery upon that account. And the prisoners were discharged of this indictment. But afterwards an indictment was found against them, and prosecuted at the expence of the crown on the representation of the judges for a conspiracy; in which the principal facts found by the special verdict in the robbery bill were charged. On this indictment they were all convicted; and the court gave judgment, that they be all set in and upon the pillory twice; that they stand committed for seven years, and until they find sureties for their good behaviour for three years afterwards. (See 19 *Howell's St. Tr.* 814.) One of them (*Eagan*) lost his life in the pillory, through the resentment of the populace, and on that account, the others did not stand a second time. But they were all in *Newgate* very closely confined, in pursuance of their sentence.

The putting in fear need not be strictly proved.

Putting him in fear.] Robbery may also be constituted by putting in fear as well as by force; or perhaps in strictness it may be said that fear will supply the place of force. 2 *East's P. C.* 711.

A colourable gift, which in truth was extorted by fear, amounts to a taking and trespass in law. As if a person with a drawn sword, or other circumstances of terror indicating a felonious intent, beg alms of another, who gives it him through mistrust and apprehension of violence, the offence is the same notwithstanding the pretence. So it is whether there were any weapon drawn or not; or whether it were an offensive weapon: or whether the person assaulted delivered his money upon the other's command, or afterwards gave it him upon his ceasing to use force, and asking it for alms; for the owner was put in fear by the assault, and there remained a reasonable ground for its continuance. 2 *East's P.C.* 555. 1 *Haw. c.* 34. § 6. *Fost.* 128.

The same rule holds, although the thing taken were not really within the original contemplation of the robber, nor the object of his pursuit at the time.

Taking money to desist from a rape.

Blackham assaulted a woman with intent to commit a rape, and she without any demand from him offered him money, which the prisoner took and put into his pocket, but continued to treat her with violence to effect his original purpose, till he was interrupted by the approach of another person. This was holden to be robbery by a considerable majority of the judges: for the woman, from violence and terror, occasioned by the prisoner's behaviour,

and to redeem her chastity, offered the money, which it was clear she would not have given voluntarily; and the prisoner, by taking it, derived that advantage to himself from his felonious conduct; though his original intent was to commit a rape. *Rex* v. *Blackham, T. T.* 1787. 2 *East's P. C.* 711.

During the riots in *London*, in the year 1780, a boy with a cockade in his hat knocked violently at the door of the prosecutor, *Mahon*, who thereupon opened it; and the boy said to him, "God bless your Honour, remember the poor mob." *Mahon* told him to go along, on which he said, "Then I will go and fetch my captain." He went; and the mob, to the amount of 100, armed with sticks and whatever they could get, soon after came, headed by the prisoner, *Thomas Taplin*, on horseback, having his horse led by the same boy. On their coming up, the bye-standers said, "You must give them money; and the boy said, "Now I have brought my captain." *Mahon* then asked the prisoner, "How much?" who answered, "Half-a-crown, Sir." On which *Mahon*, who had before only intended to give a shilling, gave the prisoner the half crown. This was holden to be a robbery. *Taplin's case, O. B. June,* 1780. *Cor. Nares J.* 2 *East's P. C.* 712.

Another case of the like sort occurred upon the trial of some of the rioters in the year 1780. The indictment was for robbing the prosecutor *Daking* in his dwelling-house; into which *Daking* swore that the prisoner *William Brown* and another man entered; and being asked by him what they wanted, *Brown* having a drawn sword in his hand, said with an oath, "Put one shilling into my hat, or I have a party that can destroy your house presently:" on which the prosecutor gave him a shilling. *Another witness* present swore, that the prisoner also used the expression, that "if he (*Daking*) would keep the blood within his mouth, he must give the shilling." The offence was holden to be robbery. *Brown's case, O. B., June,* 1780. *Cor. Nares J.* 2 *East's P. C.* 731.

In *Simons*'s case it appeared that the prisoners took a bushel and an half of wheat worth 8*s.*, and obliged the owner to take 13½*d.* for it, threatening to kill her if she refused; this was holden to be a robbery by all the judges on a conference. *R.* v. *Simons, Cornwall Lent Assizes,* 1783. 2 *East's P. C.* 712.

So in *Spencer*'s case, the prosecutor *Anderton* having in his possession corn belonging to other persons, the prisoner came to him together with a mob marching in military order; and one of the mob said, that if he would not sell they would take it away; the prisoner said, that they would give 30*s.* a load, and if he would not take that, they would take the corn away, on which the prosecutor sold that for 30*s.* which was worth 38*s.*: this was holden to be robbery; and the prisoner was convicted and executed. *Spencer's case, York Summer Assizes,* 1783. *Cor. Buller J.* 2 *East's P. C.* 712.

Fear.] The cases of robbery in which the property has been obtained by means of a fear being excited of injury to *the character* of the party robbed, appear to be confined to insinuations against, or threats to destroy the character of the party pillaged, by accusing him of sodomitical practices. 2 *Russ.* 1009. The fears unavoidably

excited by these means have, on several occasions, been determined by the judges to be sufficient to constitute the crime of robbery. The bare idea of being thought addicted to so odious and detestable a crime, is, of itself, sufficient to deprive the injured person of all the comforts and advantages of society; a punishment more terrible, both in apprehension and reality, than even death itself. The law, therefore, considers the fear of losing character by such an imputation as equal to the fear of losing life itself, or of sustaining personal injury. *Per Ashhurst* J. in delivering the opinion of the judges in *Rex* v. *James Knewland and Nathaniel Wood, O. B. February Sess.* 1796. 2 *Leach*, 730.

Thomas Jones alias Evans, who was convicted at the *O. B. June Sess.* 1776, of a robbery, in extorting money by threatening to charge the prosecutor with an unnatural crime; the prosecutor swearing that he was so alarmed by the idea, that he had neither courage nor strength to call out for assistance; and that the violence with which the prisoner detained him in the street, had put him in fear for the safety of his person. *Rex* v. *Jones, alias Evans, O. B. Feb.,* 1776. *Cor. Hotham B.* 1 *Leach,* 139. 2 *East's P. C.* 714.

Robert Harold was afterwards convicted for a similar robbery, *O. B. June,* 1778. - 2 *East's P. C.* 715

Obtaining money by putting in fear, by threatening a charge of sodomy, is felony.

The same question was afterwards most deliberately considered in the case of *James Donolly,* who was tried at the *O. B. Feb. Sess.* 1779, for a highway robbery on the person of the Hon. *C. Fielding.* It appeared that on the 18th of *January,* 1779, the prosecutor, a young gentleman, was passing through *Soho Square* between six and seven o'clock in the evening, when he met the prisoner, whom he had never seen before. The prisoner accosted him and desired that he would give him a present. The prosecutor asked for what? The prisoner answered, "You had better comply, or I will take you before a magistrate, and accuse you of an attempt to commit an unnatural crime." The prosecutor then gave him half-a-guinea, which the prisoner said was not sufficient; but the prosecutor had no more in his pocket. On the 20th of *January,* about four o'clock in the evening, the prosecutor again met the prisoner in *Oxford Street,* who made use of the same threats as before, telling the prosecutor that he knew what passed in *Soho Square,* and unless he would give him more money, he would take him before a magistrate, and accuse him of the same attempt; adding, that it would go hard with him, unless he could prove an *alibi.* The prosecutor then went into an adjoining shop, whither the prisoner followed him, and staid at the outside of the door. The prosecutor took a guinea out of his pocket and gave it to the shopkeeper, desiring him to give it to the man at the door, which was done; and the prisoner then departed. The prosecutor then deposed that he was exceedingly alarmed on both occasions, and under that alarm gave the money. That he was not aware what were the consequences of such a charge, but apprehended it might cost him his life. The jury were desired to consider, 1st, whether, upon the evidence, they were satisfied that the prosecutor delivered his money through fear and under an apprehension that his life was in danger? or 2dly, if they did not think that the prosecutor apprehended his life was in danger, whether the money

were not obtained by means of the prisoner's threats, and against the will of the prosecutor? For if it were, even in that case, though he were not in fear of his life, the crime would amount to robbery. The jury found the prisoner guilty; and said they were satisfied that the prosecutor delivered his money through fear and under an apprehension that his life was in danger. There being some difference of opinion among the judges on this case, they directed it to be argued before them, which was done on 29th *April*, 1779, at Lord C. J. *De Grey*'s house, present all the judges; when, after very full consideration, they at length all agreed that the case amounted to robbery. *Rex* v. *Donolly, O. B. Feb.* 1779. *Cor. Buller J.* 2 *East's P. C.* 715. 1 *Leach*, 193.

In the *May O. B. Sess.* following, 1779, *Sess. Pap.* No. 5. p. 3. *Willes* J. in giving judgment, (after noticing the definition of robbery by Ld. *Hale* and others to the same effect), observed that the following ingredients were necessary to constitute that offence: 1. A felonious intent, or *animus furandi.* 2. Some degree of violence or putting in fear. 3. A taking from the person of another. He observed that he should confine himself to shew that the prisoner's offence came within the above description, as the judges did not mean to draw the line as to what should or should not constitute robbery; but that the facts in this case warranted them in saying, as to the first point, that there was a felonious intention in the prisoner to rob the prosecutor. Upon the second point, that the putting in fear was not necessary to be laid in the indictment; so that the fact were charged to be done violently and against the will of the party. Nor was the circumstance of actual fear necessary to be proved; but that the law, *in odium spoliatoris*, would presume it. In like manner it had been often holden that actual violence was not necessary, but that constructive violence was sufficient: for where such a terror was impressed on the mind as did not leave the party a free agent, and in order to get rid of that terror, he delivered his money, it was robbery. It was also clear that no actual danger was necessary; for a man might commit a robbery without having any offensive weapon; and though a tinder-box or candlestick were used. For when a villain came and demanded a man's money, no one knew to what length he would proceed. That here the situation of the prosecutor was that of a young gentleman accosted at night in the street by a stranger, whom he had never before seen, and must have suspected to be a villain, who demanded a present. Even that seemed sufficient; but the stranger went on and told him that he had better comply, &c. That was a threat of a personal injury, for he had every thing to fear in being dragged through the streets as a culprit charged with an unnatural crime. That, therefore, was a reasonable fear; which might operate *in constantem*, as well as *in meticulosum virum.* It had, he said, been urged on behalf of the prisoner, that this was a fraudulent extorting, and not a taking by violence. But in many cases, fraud would supply the want of violence; as in the case of burglary, where breaking was necessary to be laid in the indictment, and yet getting admission into a house under colour of law or pretence of taking a lodging or business had been often holden sufficient evidence of the breaking into the house. But the

The putting in fear need not be laid in the indictment so that the fact be charged to be done violently and against the will of the party.

judges, he observed, did not entirely determine this case on that ground, but were of opinion that there was proof of a constructive violence which they thought was sufficient. As to the third point, that there was clearly a taking from the person; though a taking in the presence of the party would have been sufficient. As to a taking by the collar or arm, all the judges, he said, held that that did not make any material distinction, but that sufficient was proved in this case for the jury to find the prisoner guilty of robbery.

In the *October Sess.* following, *John Staples* was convicted of a similar offence, and executed. *Staples' case, O. B.*, 1779.

It is robbery to extort money from a person by threatening to charge him with an unnatural crime; though he parted with his money only from fear for his character and from no other fear.

Daniel Hickman was indicted for robbing *John Millard* in *St. James's Palace* of two guineas. He obtained the money from the prosecutor by charging him with a similar crime as in the foregoing cases; and by threatening that if he did not make him satisfaction he would bring a serjeant and a file of men to take him up before a magistrate. The prosecutor swore that he parted with his money for fear of losing his character, and that he had no other fear. The jury found the prisoner guilty; but as some on the bench thought that this case differed from that of *Donolly*, it was reserved for the opinion of the judges; who in *November*, 1783, were all of opinion that it was robbery. *Ashhurst* J. afterwards, *O. B. Feb.*, 1784. 1 *Leach*, 279., delivered their opinion; that this did not materially differ from the case of *Donolly*; for that the true definition of robbery is the stealing or taking from the person or in his presence property of any amount, with such a degree of force or terror as to induce the party unwillingly to part with his property; and that whether the terror arose from real or expected violence to the person, or from a sense of injury to the character, the law made no kind of difference: for to most men the idea of losing their fame and reputation was equally if not more terrific than the dread of personal injury. That the principal ingredient in robbery was a man's being forced to part with his property. And that the judges were unanimously of opinion, that upon the principles of law and the authority of former decisions, a threat to accuse a man of having committed the greatest of all crimes was a sufficient force to constitute the crime of robbery by putting in fear. *Hickman's case, O. B., July*, 1783. 2 *East's P. C.* 728.

But in the case of *Jackson and Shipley*, *Nottingham Spr. Ass.* 1802, before Mr. Baron *Graham*, it was decided on a case reserved, that to constitute robbery by taking money from another upon a threat to charge him with an unnatural crime, the money must be taken *immediately* upon the threat made, and not after the parties have separated, and time for the prosecutor to deliberate and procure assistance, and especially after he had consulted a friend, who was even present at the time when the money was paid, though the prosecutor parted with his money from fear of losing his character. *Rex* v. *Jackson and Shipley*, 1 *East's P. C. Add.* XXI.

The prisoners threatened to bring a mob from Birmingham, (then in a

No case however has gone further than that of *James* and *Ezekiel Astley*, who were indicted for robbing *Jonathan Grundy*. It appeared that the prisoners and a person unknown went to a public-house near *Birmingham*, during the time of the late riots,

which was three or four hundred yards from Mr. *Grundy*'s house, early in the morning, where one of them said that they were going up to Mr. *G.*'s house, "and if he did not turn out the whack, his house would be down by two o'clock in the morning;" on which the stranger observed that he himself would do it; that he was the head of the mob, and had three or four hundred men at command at any time; with other like discourse. They all departed towards Mr. *G.*'s house; but before they arrived there they saw his servant at a little distance from it, whom they accosted; *James Astley* telling him he was come as a friend to let Mr. *G.* know that this man (the stranger) was the head of the mob, and the first man who had entered all the places which were destroyed at *Birmingham.* They then seeing Mr. *G.* come out of his house, pulled off their hats, and shouted Church and King. Mr. *G.* did the same, advancing towards the prisoners in much alarm, when the stranger accosted him, saying, "I am come out of friendship to you, Mr. *G.*, to let you know your house is marked to come down to-morrow morning at two o'clock. I am the head of the mob: they are two thousand strong in *Birmingham.* I must have something to make my men drink. I can bring two or three hundred in an hour's time, or keep them back." Mr. *G.* said, "As to something to drink, you shall have any thing you have a mind for." The stranger said, "I must have money." Mr. *G.* pulled out half-a-crown from his pocket, and offered it to him; but the stranger refused it, and turned away with expressions of contempt. Mr. *G.* then asked what he wanted; the stranger replied, he must have 20 guineas; and on Mr. *G.* saying that he had not so much in his house, the other told him, that if he did not give him something handsome for his men to drink, his house should come down. Mr. *G.* said, that he might have 9 or 10 guineas, which the stranger asked to see: and as Mr. *G.* was taking his purse out of his pocket, *James Astley* told him he might depend upon it that the other man was at the head of the mob, and the like sort of discourse which had passed before concerning his power; particularly, that he was the first man who had entered every house that had been destroyed. Mr. *G.* was so struck with that expression that he immediately took the money out of his purse (9 guineas and a half,) which he gave to the stranger; who counted it, and demanded to have something to drink. They all went then into Mr. *G.*'s house, where they had liquor, and in going away assured him that he should be protected. Mr. *G.* said, that he was greatly alarmed, but not for his person: that no injury was threatened to his person: that when he delivered his money his apprehension was, that if he had refused so to do, the prisoners would have gone to *Birmingham*, and have returned with other persons, and pulled down his house and plundered it before he could have removed his wife, who was in the house in great agitation, as the prisoners had threatened, and in the same manner as different houses in *Birmingham* had been before pulled down. It appeared that the prisoners had a small share of the money afterwards. It was objected on their behalf, that there was no evidence of robbery, inasmuch as the prosecutor did not deliver his money from any immediate fear of danger to himself or his property, but from an apprehension of future injury to his house by pulling it down. And the counsel for the Crown admitting it to be a new

state of riot and disturbance), and burn the prosecutor's house down if he did not give them money, which he did under fear of that threat; Held robbery

Rex v. Astley. case, *Grose* J. proposed to have a special verdict found; but on account of the prisoner's situation, it was agreed that the truth of the evidence should be left to the jury, and if they should find the prisoners guilty, the judgment should be respited, and the facts submitted to the judges for their opinion, whether the evidence amounted to robbery. The jury found the prisoners guilty; saying that they were satisfied that Mr. *Grundy* did not deliver his money from any apprehension of danger to his life or person, but from an apprehension that if he refused, his house would at some future time be pulled down, as the prisoners and the stranger threatened, in the same manner as other houses in *Birmingham* had been before. In *Mich.* term 1792, a majority of the judges held this to be robbery. *Rex* v. *J. Astley and E. Astley, Stafford Sum. Ass.* 1792. *Cor. Grose J.* 2 *East's P. C.* 729.

But in *Rex* v. *Wood* and *Knewland*, who under pretence of an auction got a woman into a house and compelled her by threats of carrying her before a magistrate and to prison, for not paying for a lot pretended to have been bid for by her, to pay them 1*s*. through fear of prison, and for the purpose of obtaining her liberty, but without fear of any other personal violence: this was holden to be duress, and not robbery. *Ashhurst* J., in delivering the opinion of the judges, observed that there was no reason for such a degree of terror in this case as to induce the prosecutrix to part with her money; she might have known that having done no wrong, if she had been taken to prison, the law would have taken her under its protection and set her free; and that the law did not allow the fear of being sent to prison to be a sufficient ground of terror to constitute a robbery.

Where no force, there must be terror in fact. If the property be not taken by actual violence, and the owner only deliver it in consequence of prior threats, such delivery must be enforced by terror actually felt at the time to constitute the crime; otherwise there is neither actual nor constructive violence in the taking, and consequently, no robbery. 2 *East's P. C.* 733.

Therefore where the prosecutor, in consequence of the prisoners having on a prior day threatened to charge him with an unnatural crime, unless he would give him money, &c. on a subsequent day gave them 20*l*., and a bond to secure the annual payment of 50*l*.; but added that, though at the beginning of the business he apprehended injury to his person or character, yet that he had no such apprehension when he gave the money and the bond, but parted with both for the purpose of bringing the prisoners to justice, and with that view only; it was holden on a reference to the judges, that this was not a robbery. *Reane's case, O. B. June,* 1794. *Cor. Perryn B.* 2 *East's P. C.* 734.

Fear after the taking not sufficient. It is not enough that the fear arise after the property is taken. *Harman* being on horseback, desired *Halfpenny* to open a gap for him: and while he was so doing, *Harman* took the opportunity unperceived to pick his pocket of his purse. *Halfpenny* turning round and seeing the purse in *Harman*'s hand, demanded it of him, who then menaced *Halfpenny* (in the manner before-mentioned) and went away with the purse. On an indictment for robbery, the prisoner was holden guilty of simple larceny only; the property being obtained by stealth, and not by violence or putting in fear; the words of menace being used after the taking. *Harman's Case, Hil.* 17. *Jac.* 2. *Roll. Rep.* 154. 1 *Hale,* 534.

§ II. Assaulting with Intent to rob.

And taking from his person.] Taking a thing in a man's presence is in law a taking from the person. *Hale's Sum.* 73. *R.* v. *Francis and others*, 2 *Str.* 1015.

Thus, if one take or drive my cattle out of my pasture, in my presence, this is robbery, if he make an assault upon me or put me in fear. *Hale's Sum.* 73.

By stat. 7 *G.* 2. *c.* 21. Assaulting with intent to rob is also made felony, and liable to transportation. 7 G. 2. c. 21.

Stat. 4 *G.* 4. *c.* 54. § 5. repeals stat. 7 *G.* 2. *c.* 21. except only as to offences committed before July 8. 1823.; and enacts that from July 8. 1823, if any person shall maliciously assault any other person with intent to rob such other person, or shall by menaces or by force maliciously demand money, security for money, goods, or chattels, wares or merchandize of any other person with intent to steal the same, or shall maliciously threaten to accuse any other person of any crime punishable by law with death, transportation, or pillory, or of any infamous crime with a view or intent to extort or gain money, security for money, goods or chattels, wares or merchandize from the person so threatened, or shall procure, counsel, aid, or abet the commission of the said offences or of any of them: every person so offending being thereof lawfully convicted shall be adjudged guilty of felony, and shall be liable at the discretion of the court, to be transported beyond the seas for life, or for such term not less than 7 years as the court shall adjudge, or be imprisoned and kept to hard labour in the common gaol, or house of correction for any term not exceeding 7 years.

4 G. 4. c. 54. Assaults with intent to commit robbery. Demanding money, goods, &c. Threatening to accuse of crimes with intent to extort money.

With any offensive weapon, &c. assault.] *Trusty* and *Howard* were indicted for a felonious assault on *J. Halse*, with a certain offensive weapon, called a pistol, with a felonious intent to rob him. It appeared in evidence that the prisoners rushed out of a hedge on the prosecutor, the driver of a returned chaise, as he was passing along the road; and one of them presenting a pistol to him bid him stop, which the boy did, but called out for assistance to some persons whom he had met just before. On this one of the prisoners threatened to blow out his brains if he called out any more, which the prosecutor nevertheless continued to do; and presently he obtained assistance and took the men, who had made no demand of money. They were convicted and transported. *Rex* v. *Trusty and Howard*, *O. B. July*, 1783. 1 *East's P. C.* 418.

So in *R.* v. *Sharwin*, *Oakham Sum. Ass.* 1785. The prisoner was indicted for having with force and arms, with a certain offensive weapon called a wooden staff, unlawfully, maliciously, and feloniously made an assault on *J. Gough*, with a felonious intent to rob him against the statute, &c. It appeared that while *Gough* and one *Jenkinson* were riding together on the highway, *Gough* received a violent blow from a great stone which was thrown by the prisoner from the hedge. Going towards the spot, *Gough* asked him how he could be such a villain as to throw the stone; on which the prisoner threatened *Gough*, and struck him violently with a staff; but at length he was overcome and secured. The prisoner's face was blacked, and he denied his name: but on being afterwards questioned as to his motive, he said he was very poor, and wanted half-a-guinea to pay his brewer. He did not ask for

Description of the weapons.

money or goods. After conviction, the question was submitted to the judges, whether this evidence were sufficient to maintain the charge in the indictment? In Michaelmas term following the judges (ten being present) held the conviction proper, for here the weapon laid in the indictment and the weapon proved produce the same sort of mischief, namely, by blows and bruises; and this description would have been sufficient upon an indictment for murder. *Sherwin's Case*, 1 *East's P. C.* 421.

From the two preceding cases it appears that the offence may be complete within the former part of the first section of the act, *though there be no demand of money or goods*, notwithstanding a prior case of *R.* v. *Parfait*, which was supposed to establish a contrary rule. And on adverting to the statute, it is evident that the felonious intent to rob may be manifested, either by the offender making a malicious assault on the prosecutor with an offensive weapon or instrument, without also demanding money, *or* by his demanding money by menaces or in a violent manner, &c. *R.* v. *Parfait*, *O. B. Dec.* 1748. 1 *East's P. C.* 416.

Or by menaces, &c.] The indictment in the case of *R.* v. *Jackson* and *Randall* charged, that the prisoners unlawfully, maliciously, and feloniously made an assault on *A. Gillespie*, and him the said *A. G.* unlawfully and maliciously did menace, by menacing to blow his brains out, with a felonious intent, the monies of the said *A. G.* from his person and against his will feloniously to steal, take, and carry away, against the statute, &c. The Recorder thought the indictment insufficient: but the prisoner was convicted; and on a reference to the judges, they held that the indictment should either have stated that the assault was made with an offensive weapon, *Or* that a demand was made. *R.* v. *Jackson and Randall*, *O. B. April*, 1783. 1 *East's P. C.* 419.

So in the case of *Remnant*, who was committed, for "that with force and arms he made an assault on the prosecutor with intent feloniously to steal, take, and carry away from his person, &c." The court of K. B. ordered that he should be bailed, being of opinion that this was not a charge of any offence within the statute. *Rex* v. *Remnant*, 5 *T. R.* 169.

Demand any money.] From the two cases before mentioned, *R.* v. *Trusty*, and *R.* v. *Sharwin*, it appears that where the offence consists in making the assault with intent to rob, it is not necessary that there should be any demand of money.

In the case of *Rex* v. *Pegge*, *Derby Ass.* 1789. *cor. Thomson B.* 1 *East's P. C.* 420., the indictment charged that the prisoner with a certain offensive weapon or instrument called a stick, in and upon *J. R.* feloniously did make an assault, and did then and there in a forcible and violent manner feloniously demand the goods, &c. of him the said *J. R.* with a felonious intent to rob him, &c. and his goods, &c. from his person and against his will feloniously to steal, take, and carry away, against the statute. The prisoner was convicted on clear evidence of the fact to support the charge. But the words of the statute not being pursued in that part of the indictment which charged the prisoner with assaulting the prosecutor with an offensive weapon, it not being said to be done *unlawfully and maliciously*, judgment was respited that the opinion of the judges might be taken upon it. In *Trinity* term, 1789, they held the conviction right, the statute being in the disjunctive, and an

offence well charged within the act in the *latter part of the indictment* without the words unlawfully and maliciously.

From the above it seems to be admitted, that where the assault is the only offence charged within the act, it must be stated to be done *unlawfully and maliciously* as well as feloniously; and that where the offence is that of demanding money, &c. by menaces or in a violent manner, the word "feloniously" is sufficient without the others "unlawfully and maliciously."

Intent to rob.

Intent to rob.] This intent must be alleged in the indictment. Therefore where the indictment only charged that the prisoner with force and arms, *i. e.* with a certain offensive weapon, &c. unlawfully, maliciously, and feloniously made an assault on *W.* the prosecutor, "with a felonious intent the goods, chattels, and monies of him the said *W.* from the person and against the will of the said *W.* then and there feloniously to steal, take, and carry away," &c., the court held that this was not a sufficient description of the offence within the statute, namely, an attempt to rob, which always includes force and violence. The prisoner was accordingly discharged from this indictment, and tried upon a new one, in which the assault was alleged to be "with a felonious intent the monies of the said *W.* from the person and against the will of the said *W.* then and there feloniously *and violently* to steal, take, and carry away," &c.; and on this indictment he was convicted. *Monteith's case, O. B. Oct.* 1795, *cor. Heath J.* 1 *East's P. C.* 420. 2 *Leach,* 702.

24 H. 8. c. 5. Killing a person attempting to rob.

By stat. 24 *H.* 8. *c.* 5. If any person be indicted, or appealed, for killing any person attempting to rob, he shall be acquitted.

§ III. Levying Hue and Cry on a Robbery committed.

13 Ed. 1. st. 2. c. 1. Hue and cry.

By stat. 13 *Ed.* 1. *st.* 2. *c.* 1. Immediately upon robberies committed, fresh suit shall be made from town to town, and from county to county.

How hue and cry shall be made, see Vol. II. *tit.* Hue and Cry.

§ IV. Hundred when liable to answer Damages.

[For the statutes on this subject, see *tit.* Hundred, Vol. II.]

Hundred shall answer.

By stats. 13 *Ed.* 1. *st.* 2. *c.* 2. 28 *Ed.* 3. *c.* 11. The hundred where the offence was committed, shall be answerable for the robberies and for the damages, if the offender be not taken.

Hundred neglecting hue and cry, shall contribute.

And by stat. 27 *Eliz. c.* 13. § 2. Such hundred may recover half the damages from any other hundred where fresh suit after hue and cry shall not be made.

Hundred not answerable, if robber is apprehended.

And by stat. 8 *G.* 2. *c.* 16. § 3. The hundred shall not be chargeable, if one robber be apprehended in 40 days from the publication in the Gazette; as is hereafter mentioned.

Nor for a robbery in a new but illegally made highway.

A new highway changed for an ancient one without legal authority, is said not to be such a highway in which the inhabitants are bound to watch, nor to make amends for a robbery therein committed. 1 *Haw. c.* 76. § 3.

Nor if on the Lord's day.

Likewise by stat. 29 *C.* 2 *c.* 7. § 7. If any person, which shall travel upon the *Lord's* day, shall be then robbed, the hundred shall not be liable: nevertheless they shall make hue and cry, on pain of forfeiting to the king as much as might have been reco-

vered against the hundred, if the robbery had not been on the *Lord's* day.

Except when going to church.

Which shall travel.] *Tashmaker* v. *the Hundred of Edmonton*, 1 *Str.* 406. *Com.* 345. The plaintiff lived a mile or two from the church, and going thither with his lady in his coach upon a *Sunday* was robbed; and he brought his action against the hundred, and recovered; for the statute extends only to the case of *travelling:* But *Pratt* Ch. J. said if they had been going to make visits, it might have been otherwise.

Nor if it be in an house.

Also, if any man be robbed in his house, the hundred shall not be charged therewith, whether it be done by day or night; because every man's house is his castle, which he ought to defend; and if any one be robbed in his house, it shall be esteemed his own fault. *Dalt. c.* 84.

Nor if it be in the night.

Also a robbery done in the night shall not charge the hundred; but yet if it be in the day-time, or there be so much day-light, as that one may see a man's face, so that the robber may be known, though it be before the sun-rising or after the sun-setting, the hundred shall answer for it. *Dalt. c.* 84.

In what case there must be two in company.

By stat. 22 *G.* 2. *c.* 24. No person shall recover against the hundred more than the value of 200*l.* unless the persons robbed shall at the time of the robbery be together in company, and be in number two at the least, to attest the truth of his or their being so robbed.

The provision in the yearly land tax acts that no receiver-general, or any of his agents employed for carrying any money on account of the said tax, shall maintain an action against the hundred for being robbed, unless the persons carrying such money be together in company, and be in number three at the least, is repealed by stat. 3 *G.* 4. *c.* 88. § 10.

3 G.4. c.88.

§ V. Manner of bringing the Action against the Hundred.

[For the statutes on this subject, see Vol. II. *title* Hundred.]

In order to make the hundred liable, these things following must be done;

27 El. c.13. Notice to the inhabitants.

By stat. 27 *Eliz. c.* 13. § 11. *The person robbed shall with as much convenient speed as may be, give notice thereof unto some of the inhabitants near the place.*

And though that place, where notice is given, be in another hundred or county, yet it is good enough; for a stranger may not know the confines of the hundred or county; and that hundred where notice is given must make hue and cry, and by that means the hundred where the robbery was committed will soon know thereof. *Cro. Car.* 41. 379. 3 *Salk.* 184.

8 G.2. c.16. Notice to a constable

By stat. 8 *G.* 2. *c.* 16. § 1. *He shall also give notice, with as much convenient speed as may be, to a constable of the hundred, that is, the high constable or to a constable of some place near; or leave notice in writing at his house, describing therein the felon, and the time and place of the robbery.*

What is a good notice within 8 G.2. c.16. in an action

Ball v. *the Hundred of Wymersley*, 2 *Str.* 1170. Upon a case made at the assizes, it was stated that soon after six in the morning the plaintiff was robbed at two miles and a half distance from *Northampton*, and the highwayman cut his bridle and stirrups,

threw them into a ditch, and turned his horse loose; that the plaintiff recovered them, remounted, rode through a village called *Cotton*, where he gave no notice, met three men on the road, whom he informed of the robbery, and arrived at *Northampton* by seven o'clock, and gave notice to an innkeeper there, from whence he went to *Rotherthorpe*, three miles off, where the high constable lived, and between eight and nine gave notice. And whether this notice was sufficient to maintain the action, was the question. And the court, on argument, held it to be good notice, for the high constable is the properest person to go to, and it is not required that he go to the next constable. It appears that the plaintiff lost no time, considering the circumstances he was in; and *Rotherthorpe* is not at such a distance, but that it may come within the meaning of the word *near*. So the plaintiff had judgment. *Bull. N. P.* 185. against the hundred.

By stat. 8 *G.* 2. *c.* 16. § 11, 12. Every constable to whom such notice shall be given, and every high and petty constable within the hundred, as soon as the same shall come to his knowledge, by the party robbed, or by any to whom such notice hath been given, shall, with the utmost expedition, make or cause to be made fresh suit and hue and cry after the felons, on pain of *5l.* with full costs, half to the king; and half to him who shall sue in six months. *Note;* the penalty here is but small; but as the not pursuing hue and cry was also an offence at the common law, the offender may be indicted at the common law, and thereupon fined and imprisoned. 8 G.2. c.16.

§ 1. *The party robbed shall also within twenty days cause notice to be given in the Gazette, describing therein the felon, and the time and place of the robbery, and the goods and effects whereof he was robbed.* Notice in the Gazette.

Describing therein the felon.] *Whitworth* v. *the Hundred of Grimshoe*, 2 *Wils.* 109. The plaintiff, *Whitworth*, on the trial at the assizes, gave evidence that one of the robbers was tall and lusty, had on a brown woollen cap or bonnet, and a blue jacket, was of a fresh complexion, had particular large red eye-brows, and full ruddy cheeks, by either of which the plaintiff thought he could have known the robber from any other person. The notice in the Gazette was, that the robber was a "tall lusty man, of a fresh complexion, had on a brown woollen cap or bonnet, and a blue jacket." It was objected, that this description in the Gazette was insufficient, a very material circumstance, as to the eye-brows and countenance, being omitted. And of that opinion was the Court; and the defendant had judgment.

By stat. 27 *Eliz. c.* 13. § 11. *He shall also be examined on oath within twenty days next before the action brought before a justice in or near the hundred, whether he knows any of the robbers; and if he confesses that he does, he shall, before the action brought, be bound over by the said justice effectually to prosecute the person or persons so known to have committed the said robbery.* To be examined on oath.

He shall also be examined.] That is, the party robbed, who is to bring the action, shall be examined. But here note a diversity, *Raymond* v. *the hundred of Oking*, *Cro. Car.* 37. The *servant* was robbed of his master's goods, and the servant made oath before a justice, and the master brought the action against the hundred. *Per Cur.*: the action well lies for the master; and the

servant's oath is sufficient, for it was properly in his notice that he was robbed, and did not know any of the robbers, and the master knows it not that he was robbed, or who were the persons, but by report of his servant; and it would be inconvenient, if the master should not bring the action, but the servant only; for the servant might release, or compound, or discontinue the suit, and so the master should have the loss by his falsehood; therefore the master shall bring the action, and have his servant who was robbed to be his witness.

Within twenty days next before.] The time of making such oath must be laid in the declaration; for that is traversable. 3 *Salk.* 184.

Before a justice.] And if the justice shall refuse upon his request to examine him, an action will lie against the justice, because he doth not act therein as a judge of record, but as a minister appointed for the examination by the statute. *Cro. Car.* 211.

"That he hath good reason to suspect that the fact was done by A. and B." is an insufficient affidavit in an action against the hundred under 9 G.1. c.22.

Whether he know any of the robbers.] *William King* v. *the Hundred of Bishop's Sutton*, 2 *Str.* 1247. In an action brought against the hundred, the oath proved was, that he had *good reason to suspect* the fact was done by *Robert Gibbs* and *William Langford*, both of such a parish. And a doubt arising at the assizes, whether this were sufficient or not, a case was made, and twice argued at the bar. And upon the second argument, the Court were of opinion that the examination did not maintain the action. The oath required is a condition precedent, and for the sake of the hundred, and to prevent screening the offenders. There is a great deal of difference between *suspecting* and *knowing*: a man who *knows* the offender may purposely stop at the word *suspect*; to avoid being bound to prosecute: and though it would be equivocating, yet it would hardly be perjury assignable; it being only a suppression of part of the truth. He should have said, *I suspect them to be the men, but I do not know it.* It would be dangerous to let them go out of the words of the act, and therefore the plaintiff failed in the action, and paid the costs of a nonsuit.

Bond to pay costs.

Also, by stat. 8 *G.2. c.*16. § 1. Before the action be commenced, he shall go before the chief clerk, or secondary, or the filazer of the county, or the clerk of the pleas of that court wherein such action is intended to be brought, or their deputies, or before the sheriff of the county, and enter into 100*l.* bond to the high constable, with two sufficient sureties, to pay him costs, if he (the prosecutor) shall be cast.

Bond to be certified.

§ 2. If bond be taken before the sheriff, he shall immediately certify the same in writing to the respective officer above-mentioned; which certificate the person robbed shall deliver to such officer before the action is brought: and he shall pay not more than 2*s.* 6*d.* fee to the sheriff for making such certificate, nor more than 2*s.* 6*d.* to the officer for receiving and filing the same. And the bond shall be delivered to the high constable *gratis.*

Time of bringing the action. 8 G.2. c.16. 27 Eliz. c.13.

All this being done, and 40 days being expired from the day of the publication in the Gazette (for if one of the offenders be apprehended within that time, the action will not lie, 8 *G.* 2, *c.* 16. § 3.) and also a whole year not being expired from the time of the robbery committed (for if a year be expired, in such case also the action will not lie, by stat. 27 *El. c.* 13. § 9.) but all these things

being regularly and duly performed, then the action may be brought.

And by stat. 8 *G.* 2. *c.* 16. § 4. The process shall be served on the high constable only, who shall cause public notice thereof to be given in one of the principal market towns on the next market day; and if there be no market town within the hundred, then in some parish church within the hundred, on the next *Sunday*, immediately after divine service. He shall also enter appearance, and defend the action, as he shall be advised. Process to be served on the high constable.

§ 15. On the trial, any inhabitant may be a witness for the hundred. Inhabitants may be witnesses.

§ VI. Damages, how to be levied and applied.

[See Vol. II. titles. Hue and Cry and Hundred.]

By stats. 27 *Eliz.* *c.* 13. § 5. — 8 *G.* 2. *c.* 16. § 4. If the plaintiff recover, the sheriff shall shew the writ of execution to two justices (1 *Q.*) in or near the hundred. Writ of execution to be shewn to two justices.

By stat. 8 *G.* 2. *c.* 16. § 4. The high constable also shall cause his attorney's bill to be taxed by the proper officer, and shall give in to the said justices an account thereof, and of his other expenses in defending the action, and make due proof of the same upon oath, to the satisfaction of the justices. And the high constable's charge.

§ 4. 10. The said two justices shall thereupon cause a taxation to be made, and levied in 30 days upon every division within the hundred, by the constables, by distress and sale. Taxation.

§ 4, 5. And the constable shall in 10 days pay the same to the sheriff, and the sheriff shall pay the same, without fee, to the plaintiff for his costs and damages, and to the high constable for his expenses. Payment.

§ 7, 8. The high constable shall, in like manner, if he recover against the plaintiff, be reimbursed his expences which shall be over and above the costs to be taxed, and also such costs taxed as he shall not be able to recover, by reason of the insolvency of the plaintiff and his sureties, which shall be paid in 10 days to the said two justices, or one of them, who shall, upon request, deliver over the same to the high constable. High constable to be reimbursed, if the plaintiff is cast.

§ 6. And the sheriff shall not be obliged to return the writ of execution till after 60 days from the time it shall be delivered to him, that there may be time for the taxation, assessment, and collecting the money. Return of the writ.

By stat. 22 *G.* 2. *c.* 46. § 34. Execution is not to be levied on any particular inhabitant, but taxation is to be made.

§ VII. Pardon for discovering Accomplices.

By stat. 4 *W.* 3. *c.* 8. § 7. If any person being out of prison, shall commit any robbery, and afterwards discover two or more persons, who shall commit any robbery, so as two or more be convicted; he shall have the king's pardon for all robberies he shall have committed before such discovery. Pardon for discovering accomplices.

§ VIII. Principal and Accessary in Murder.

All that come in company to rob are principals, though one actually do it. *Hale's Sum.* 72. Accessary.

[For Accessary, see tit. Accessary, Vol. I.]

§ IX. Punishment of Robbery.

Clergy.

Robbery is generally excluded from the benefit of clergy. 3 *Inst.* 68. 2 *Hale*, *c.* 48.

Navy.

By stat. 22 *G.* 2. *c.* 33. Robbery in the Navy shall be punished with death or otherwise as a court-martial, on consideration of the circumstances, shall find meet.

§ X. What shall be done with the Goods of which a Person is robbed.

Restitution of goods taken by robbery.

If the person robbed do not prosecute the robber; if his goods be waived in flight, or seized by the king's officers, or lord of the manor, he shall not have them restored. *Kel.* 49.

But if they be not waived in flight, nor seized by the king's officers or the lord of the manor, he may take his goods again wherever he finds them, without the formality of restitution being awarded, if they be not sold in open market; and this also, although he do not prosecute the robber. *Kel.* 49.

But if he shall prosecute the robber to conviction, he shall have restitution, although they have been waived, and seized, and even sold in open market. *Kel.* 48.

Notice in the Gazette, before the Action brought against the Hundred.

NOTICE is hereby given, (pursuant to an act of parliament made in the eighth year of the reign of His Majesty King George *the second, intituled,* an act for the amendment of the law relating to actions on the statute of hue and cry), *that* A. I. *of* ——— *in the county of* ———, *gentleman, on* ——— *the* ——— *day of* ——— *now last past, between the hours of eight and nine in the forenoon of the same day, was overtaken and robbed by two persons in the highway, between* ——— *and* ——— *in the county of* ———, *one of them being a tall thin man, marked on the face with the small pox, and having on a brown riding coat, mounted on a black mare; the other a middle-sized man, wearing his own hair of a light brown colour, and riding on a grey gelding; which persons took from him the said* A. I. *ten guineas in gold, seven shillings in silver, an halfpenny, and a silver watch, and then made off.*

Examination of the Person robbed before the Action brought.

County of ——— } *THE examination of* A. I. *of* ——— *in the county aforesaid, yeoman, taken on oath before me* J. P. *esquire, one of His Majesty's justices of the peace for the said county, dwelling in* [or *near to*] *the hundred of* ——— *within the said county, the* ——— *of* ——— *in the* ——— *year of the reign of*

Who saith, that on ——— the ——— day of this present month of ———, between the hours of two and three in the afternoon of the same day, at or near a place called ———, he was assaulted in the highway there leading from ——— to ——— by two horsemen, whereof one was a tall lusty man, wearing a black wig, and a blue great coat, mounted on a bay gelding about fifteen hands high, with a black mane and tail, and star in his forehead; and the other a middle-sized man, of a swarthy complexion, having a large scar on his left cheek, having on a dark brown riding coat, and mounted on a black gelding; and by them robbed on the highway aforesaid of the sum of ——— in money, one silver watch of the value of 4l. and one pocket-book; And that he the said A. I., *at the time of the said robbery committed, did not know, nor yet doth know, either of the said persons who committed the same: And that he is since informed, that the said highway and place where he was so robbed as aforesaid, are in the parish of ——— and within the hundred of ——— in the said county.*

Taken, made, and signed the day and year above written, before me, A. I.

J. P.

Indictment for a Robbery.

County of ——— } *THE jurors for our lord the king upon their oath present, That* A. O., *late of ——— in the county of ——— labourer, on the ——— day of ——— in the ——— year of the reign of ———, with force and arms, at ——— in the county of ———, in the king's highway there, upon one* A. I., *in the peace of God and of our said lord the king then and there being, feloniously did make an assault, and him the said* A. I. *in bodily fear and danger of his life, in the highway aforesaid, then and there feloniously did put, and one gold watch of the value of ——— of the goods and chattels of him the said* A. I. *from the person and against the will of the said* A. I. *in the highway aforesaid, then and there feloniously and violently did steal, take, and carry away; against the peace of our said lord the king, his crown and dignity.*

Note, the form of a warrant for apprehending a robber upon fresh suit is inserted under the title **Hue and Cry**, Vol. II.

Rout. See **Riot.**

Rum. See **Excise.**

Run Goods. See **Excise.**

Sabbath. See **Lord's Day.**

Sacrilege, Larceny, or Robbery, in a Church or Chapel.

CLERGY was, it seems, allowable at common law in case of sacrilege, unless, as it is said, the ordinary refused it. But now all persons in general are ousted of clergy for the "feloniously taking of any goods out of any parish church, or other church or chapel," by stat. 1 *Ed.* 6. *c.* 12. § 10. in all cases, except that of challenging peremptorily more than 20, which is supplied by stat. 3 *&* 4 *W.* *&* *M.* c. 9. as to indictments (and is the less material, as such challenges are now merely over-ruled); and this, as well in regard to indictments in another county, as in that in which the sacrilege was committed. 2 *Hale*, 333. *Vide* 11 *R.* 29. 1 *Ed.* 6. *c.* 12. § 10. 2 *Haw.* *c.* 33. § 74. 3 *&* 4 *W.* *&* *M.* *c.* 9. (2 *Hale*, 270.) 5 *&* 6 *Ed.* 6. *c.* 10. 2 *East's* *P. C.* 630.

Accessaries. None of the statutes expressly exclude *accessaries* from their clergy, unless the offence amount to burglary. But quære, whether they are excluded by the common law, which gives no person any right to the privilege of clergy, but at the discretion of the ordinary? yet quære, whether the discretion of the ordinary has now any thing to do with the benefit of clergy? 2 *Haw.* 33. § 9. 76. 2 *MS. Sum.* 201.

The stat. 4 *G.* 2. *c.* 32., against stealing *lead* or *other fixtures* there enumerated from *buildings*, has been holden to extend to *churches*. See title Larceny, Vol. III. p. 245.

This provision is not confined to goods used for divine service; it extends to articles kept in the church to keep it in proper order. — And such goods will be under the protection of the statute whilst the church is under repair, unless they are brought in merely for the purpose of such repairs. — So ruled by eleven judges in considering the following case.

R. v. Rourke. *Catharine Rourke*, *MS. C. C. R.*, was convicted before *Bayley* J. at *Kingston Spring* assizes, 1819, of sacrilege, in stealing an iron pot value 6*d.*, and a snatch block, value 4*s.*, the property of the churchwardens. (N. B. The church was repairing.)

2 Hale, 365. The block was to raise weights in case the bells wanted repairing, and the pot for charcoal to air the vaults. They had been kept in the church for years, and were not brought in for the then repairs. The learned judge, doubting whether these were such goods as were entitled to the protection of the church, respited sentence, and submitted the point to the consideration of the Judges, in *E. T.* 1819, who were of opinion that a capital sentence ought to be passed upon the prisoner: that the protection of the place was not confined to what was used for divine service, but to what was kept to keep the church in proper order, and that the protection continued whilst the church was repairing. The violation of the sanctity of the place was the thing the statute meant to prevent.

See also tit. Burglary, Vol. 1. and tit. Larceny, Vol. III.

Sales at Auction. See Excise.

Salmon. See Fish and Fisheries.

Salt. See Excise.

Schoolmasters.

HOW far schoolmasters, being protestant dissenters, are exempted, as such, from the penalties inflicted by the law for teaching school without licence, is treated of under the title **Dissenters**, Vol. I.

Where a schoolmaster, in correcting his scholar, happens to occasion his death; if on such correction he is so barbarous as to exceed all bounds of moderation, he is at least guilty of manslaughter; and if he make use of an instrument improper for correction, and apparently endangering the scholar's life, as an iron bar, a sword, or kick him to the ground, and then stamp on his belly, and kill him, he is guilty of murder. 1 *Haw. c.* 29. § 5.

See Vol. I. p. 228. title **Assault, &c.**

Seamen.

Of Apprenticeships to the Sea Service, see title **Apprentices**, Vol. I. p. 159—163.

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§ I. Arrest. — Court Martial.

[22 G. 2. c. 33. — 31 G. 2. c. 10. — 44 G. 3. c. 13.]

BY stat. 31 *G.* 2. *c.* 10. § 28. No listed seaman shall be taken out of H. M.'s service by any process other than for some criminal matter, unless affidavit be first made that the debt or damage amounts to 20*l.* **In what cases they may be arrested.**

31 G.2. c.10. § 22. But the plaintiff may, on notice first given to the defendant, enter a common appearance, and proceed to judgment and outlawry, and have execution other than against his body.

44 G.3. c.13. Seamen arrested by civil or criminal process. And in order to prevent the practice of obtaining the liberation of seamen by means of improperly suing out civil or criminal process, it is enacted, by stat. 44 *G.* 3. *c.* 13. § 1. That petty officers or seamen arrested by sheriffs or by other officers, and thereby taken out of H. M.'s sea service, or from out of any ship appointed for receiving volunteers and impressed men, or from the custody of any officer in H. M.'s sea service, shall be by such sheriff, &c. kept in custody after being entitled to be discharged from any process, and be conveyed to the commander-in-chief, or some commissioned officer authorized to raise seamen, or to some principal officer employed in regulating the service of raising men for the fleet, whichever shall be at or nearest the place where such petty officer, &c. shall happen to be, to serve on board H. M.'s fleet. Sheriff, &c. conducting such seaman, &c. how to be paid. And the sheriff, gaoler, or other officer, shall be paid by the treasurer of the navy, upon producing a certificate for conducting such seaman at the rate of 2*s.* per mile.

Transfer of such seaman, &c. to be certified. § 2. The transfer of such seaman from one sheriff, &c. to another, by virtue of *habeas corpus* or otherwise, shall be certified upon the back of the process, by the party in whose custody they shall be, who shall state that such petty officer, &c. is liable to be kept in the service, or as the case may be.

Remedy against the sheriff, &c. for neglect. § 3. If any sheriff, &c. shall neglect or refuse to conduct or convey such seaman to any distance not exceeding 80 miles, for the space of two days; or to any distance not exceeding 20 miles, for the space of three days; and so at the rate of 40 miles a-day after the time that such petty officer, &c. ought to be so conducted, but shall wilfully or negligently keep him in custody for any space of time over and above the time above specified, without so conducting him, such sheriff, &c. shall be liable to an action of trespass at the suit of such petty officer, &c. or seaman.

Sheriff, &c. suffering an escape. § 4. If any sheriff, &c. shall wilfully or negligently suffer any such seaman to escape, he shall be liable to the penalty of 100*l.* recoverable in any of the courts of record at *Westminster;* one moiety thereof to the king, and the other to the party suing.

Limitation of action; and costs. § 5. And any action by virtue of this act must be brought within three calendar months after the fact; and if the plaintiff fail in such action, the defendant shall have treble costs.

What offences the court martial may punish. By stat. 22 *G.* 2. *c.* 33. § 4. No court martial may punish or try any offence committed by any seaman in H. M.'s service, which shall not be committed on the main sea, or in great rivers beneath the bridges, or in a haven or creek within the jurisdiction of the admiralty; except in the case of spies, or of mutiny and desertion, or disobedience, or of offences committed on land in foreign countries.

§ II. Exercising Trades.

[22 G. 2. c. 44. — 3 G. 3. c. 8.]

Where they may exercise trades. By stats. 22 *G.* 2. *c.* 44. and 3 *G.* 3. *c.* 8. Seamen who have been employed in the king's service since the accession of king *George* the second, and not deserted, may set up and exercise such trades

as they are apt for, in any town or place of *G. B.* or *Ireland*, without molestation (except in *Oxford* or *Cambridge*); and if any person be sued thereupon, and the plaintiff be cast, such person shall have double costs.

§ III. Swearing, &c.

[1 G. 1. st. 2. c. 25. — 19 G. 2. c. 21.]

By stat. 19 *G.* 2. *c.* 21. § 5. A seaman, instead of being committed to the house of correction for default of paying the penalty for swearing, shall be put in the stocks for one hour for every single offence, and for any number of offences of which he shall be convicted at one and the same time, two hours. Convicted of swearing.

By stat. 1 *G.* 1. *st.* 2. *c.* 25. § 1, 2. The treasurer, comptroller, surveyor, clerk of the acts, or any of the commissioners of the navy, may punish seamen and others making disturbances in the yards or offices, and may bind them to their good behaviour and to appear at the next assizes, or general quarter sessions, to be prosecuted for such offence. Making disturbance in the yards.

§ IV. Persons falsely assuming Names, &c. of Seamen to obtain Prize Money.

[3 G. 3. c. 16. — 57 G. 3. c. 127. — 4 G. 4. c. 46.]

By stat. 57 *G.* 3. *c.* 127. § 4. It is enacted, that in order to bring into one act the several provisions made for the prevention and punishment of the crimes of personation and forgery, for the purpose of obtaining prize money, if any person or persons shall willingly or knowingly personate or falsely assume, or cause or procure any other person to personate or falsely assume, the name or character of any commissioned officer, warrant or petty officer, or seaman, or any commissioned or non-commissioned officer of marines, or marine, or any other person entitled or supposed to be entitled to any wages, pay, prize money, bounty money, pension money, or other allowances of money for or in respect of services performed or supposed to have been performed on board of any ship or vessel of H. M., his heirs or successors, or the wife, widow, executor or administrator, relation or creditor, of any such officer, seaman, or other person as aforesaid, in order to receive any wages, pay, prize money, bounty money, pension money, or other allowances of money due or supposed to be due for or in respect of the services of any such officer, seaman, marine, or other person as aforesaid, performed or supposed to have been performed on board of any ship or vessel of H. M., his heirs or successors: Persons falsely assuming the names or characters of others entitled to pay or prize-money, in order to receive the same;

or shall falsely make, forge, counterfeit, or alter, or cause or procure to be falsely made, forged, counterfeited, or altered, or willingly act or assist in the false making, forging, counterfeiting, or altering, any letter of attorney, order, bill, ticket, certificate of service, or other certificate whatsoever, assignment, last will, or other power or authority whatsoever, in order to receive or to enable any other person to receive any wages, pay, prize money, or counterfeiting letters of attorney, &c.;

57 G.3. c.127. bounty money, pension money, or other allowances of money due or supposed to be due for or in respect of the services of any such officer, seaman, marine, or other person as aforesaid, performed or supposed to have been performed on board of any ship or vessel of H. M., his heirs or successors, with intention to defraud any person or persons, body or bodies politic or corporate whatsoever; or shall utter or publish as true, or shall aid or assist in uttering or publishing as true, any false, forged, counterfeited, or altered letter of attorney, order, bill, ticket, certificate of service, or other certificate whatsoever, assignment, last will, or other power or authority whatsoever, in order to receive any wages, pay, prize money, bounty money, pension money, or other allowances of money due or supposed to be due for or in respect of the services of any such officer, seaman, marine, or other person as aforesaid, performed or supposed to have been performed on board of any ship or vessel of H. M., his heirs or successors, with intention to defraud any person or persons, body or bodies politic or corporate whatsoever, knowing the same to be false, forged, counterfeited, or altered; or shall willingly and knowingly take a false oath to obtain the probate of any will or wills, or to obtain letters of administration, in order to receive, or to enable any other person to receive, any wages, pay, prize money, bounty money, pension money, or other allowances of money due or supposed to be due for or in respect of the services of any such officer, seaman, marine, or other person as aforesaid, performed or supposed to have been performed on board of any ship or vessel of H. M., his heirs or successors; or shall demand or receive any wages, pay, prize money, bounty money, pension money, or other allowances of money due or supposed to be due for or in respect of the services of any such officer, seaman, marine, or other person as aforesaid, performed or supposed to have been performed on board any of H. M.'s ships or vessels, upon or by virtue of any probate of any will or letters of administration, knowing the will on which such probate shall have been obtained to be false, forged, and counterfeited, or knowing the probate of such will, or such letters of administration as last aforesaid, to have been obtained by means of any such false oath as aforesaid, with intention to defraud any person or persons, body or bodies politic or corporate whatsoever, every such person so offending shall be deemed guilty of felony, without benefit of clergy.

or uttering such letters of attorney, &c.;

or taking a false oath to obtain probate of wills or letters of administration, in order to receive pay or prize money, shall suffer death.

R. v. Tannett, M.S. C.C.R.

An indictment on stat. 57 *G.* 3. *c.* 127. § 4. charged the prisoner with wilfully and knowingly personating and falsely assuming the name and character of *Peter McCann*, a person entitled to prize money for and in respect of his services performed on board of a ship of H. M.'s called the Tremendous, in order to receive such prize money, with intent to defraud the commissioners and governors of the royal hospital for seamen at *Greenwich*, against the form of the statute, &c. A second count described *Peter McCann* as a person *supposed to be entitled, &c.* for services *supposed to have been performed.* Upon the evidence it appeared by the prize-list and muster-book of the Tremendous, produced by proper officers from *Greenwich* hospital, that there was a person of the name of *Peter M'Carn*, entitled to prize money, but no person of the name of *Peter McCann*.

Wood B. by whom the prisoner was tried, inclined to direct an acquittal upon this variance in the name: but he ultimately left the case to the jury, directing them to say whether the prisoner intended to personate *Peter M'Carn*. The jury found that he did so intend, and pronounced a verdict of guilty; upon which judgment was respited, and the point reserved for the consideration of the twelve judges; who determined that the conviction was wrong. *Rex* v. *Tannett, Kent Lent Ass.* 1818. *MS. C.C.R.* R. v. Tannett.

Rex v. *Potts,* alias *Dangreen.* The prisoner was tried before *Wood* B. at *Kent Lent* Assizes, 1818, on an indictment containing the two following counts: (viz.) The jurors for our lord the king upon their oath present, that *Martha Potts*, late of *Greenwich*, in the county of *Kent*, single woman, otherwise called *Martha, the wife of Gustoff Dangreen*, on the first day of *May* in the 57th year of the reign of our sovereign lord *George* the third, by the grace of God, of the U. K. of *G. B.* and *Ireland*, king, defender of the faith, with force and arms at the parish aforesaid, in the county aforesaid, feloniously, willingly, and knowingly, did procure one *John Williams* to personate and falsely to assume the name and character of one *Thomas Jacobs*, a person entitled to a certain allowance of money, for services done on board certain ships of our said lord the king, in order to receive such allowance of money due and payable for and on account of the services of the said *Thomas Jacobs* as aforesaid, and that the said *John Williams* by the procurement of the said *Martha Potts*, otherwise called *Martha Dangreen* as aforesaid, then and there with force and arms feloniously, willingly, and knowingly did personate and falsely assume the name and character of the said *Thomas Jacobs*, a person entitled to a certain allowance of money, for services done on board certain ships of our said lord the king, in order to receive such allowance of money, due and payable for, and on account of the services of the said *Thomas Jacobs* as aforesaid, with intent to defraud the commissioners and governors of the royal hospital for seamen at *Greenwich*, in the county of *Kent*, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. Rex v. Potts, alias Dangreen, MS. C. C. R. 1st count.

And the jurors aforesaid, upon their oath aforesaid, do further present that the said *John Williams*, late of *Greenwich*, in the county of *Kent*, labourer, afterwards, to wit, on the said first day of *May*, and in the year aforesaid, with force and arms, at *Greenwich* aforesaid, in the county aforesaid, feloniously, willingly, and knowingly, did personate and falsely assume the name and character of one *Thomas Jacobs*, a person entitled to a certain allowance of money, for services done on board certain ships, of our said lord the king, in order to receive such allowance of money, due and payable for and on account of the services of the said *Thomas Jacobs* as aforesaid, with intent to defraud the commissioners and governors of the royal hospital for seamen, at *Greenwich*, in the county of *Kent*, and that the said *Martha Potts*, otherwise called *Martha Dangreen*, then and there, to wit, at the time of committing the felony aforesaid, with force and arms, feloniously, willingly, and knowingly, was present, aiding, abetting, assisting, comforting, and maintaining the said *John Williams*, to do and commit the felony aforesaid, in form aforesaid. And so the jurors aforesaid, upon their oath aforesaid, do say that the afore-

R. v. Potts.

said *Williams*, and the said *Martha Potts*, otherwise called *Martha Dangreen*, the felony aforesaid, in manner and form aforesaid, feloniously, willingly, and knowingly did do and commit against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

There being no evidence of previous procurement, the jury acquitted the prisoner of the first count, and all the other counts in the said indictment, except the thirteenth, on which they found the prisoner guilty; she being present and asserting that *Williams* was *Thomas Jacobs*. The learned judge respited the judgment, to take the opinion of the judges upon that count, doubting whether it was a good one; as the act makes no provision as to aiders, abetters, assistors, comforters, and maintainers in this part of the act, though in a subsequent part as to forging letters of attorney, &c. it provides against those who shall willingly act or assist therein, or with respect to uttering and publishing against those who shall aid or assist. His lordship also doubted whether the doctrine of *a principal in the second degree* (which seems to be the idea of this count) could apply to this case, because principals in the second degree, and principals in the first degree, may be charged jointly as doing the act; whereas it appeared difficult to allege, that a *man and a woman* jointly personated *one man*.

Williams had been convicted of personating *Jacobs*, at a former assizes, and the record of his conviction was produced to prove that fact, on this indictment. The judges held the conviction right.

Out-pensioners of Greenwich hospital.

In like manner, by stat. 3 *G*. 3. *c*. 16. § 6. Whoever shall personate or falsely assume the name and character of an out-pensioner of *Greenwich* hospital, entitled or supposed to be entitled to any out-pension or allowance of money from the commissioners of the hospital, in order to receive the money due or supposed to be due on such out-pension due to him, or procure any other to do the same, shall be deemed guilty of felony without benefit of clergy.

And in order to receive their pension half yearly as it shall become due, such pensioners shall, together with the printed bill delivered to them by the commissioners, produce a certificate under the hand of the minister and churchwardens where they reside, that such person is, to the best of their knowledge and belief, the person named in such bill.

4 G. 4. c. 46. So much of stat. 3 G. 3. c. 16. as excludes the benefit of clergy from persons personating pensioners repealed; and offenders to be liable to transportation.

By stat. 4 *G*. 4. *c*. 46. § 1. After reciting that whereas by stat. 3 *G*. 3. *c*. 16. it is among other things enacted, that whosoever willingly and knowingly shall personate or falsely assume the name or character of, or procure any other to personate or falsely to assume the name and character of any person entitled or supposed to be entitled as an out-pensioner to any out-pension or allowance of money, from the commissioners or governors of the said hospital, in order to receive the money due or supposed to be due on such out-pension, every such person so offending, and being lawfully convicted of any such offence or offences, shall be deemed guilty of felony, and suffer death as a felon without benefit of clergy: and whereas it is expedient that a lesser degree of punishment should be provided for the said offence by the above recited act; it is enacted that so much of the said recited act as excludes the benefit of clergy from persons convicted of the felony thereby

created shall be and the same is hereby repealed; and that from and after the passing of this act, (4 *July*, 1823.) any person convicted of the said felony shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned only, or to be imprisoned and kept to hard labour in the common gaol or house of correction, for any term not exceeding seven years. 4 G.4. c.46.

§ V. Seamen in the Merchant Service. — Recovery of Wages, &c.

[2 G. 2. c. 36. — 31 G. 3. c. 39. — 37 G. 3. c. 73. — 45 G. 3. c. 81. — 59 G. 3. c. 58.]

2 G.2. c.36. made perpetual by 2 G.3. c.31. § 1.

Agreements for wages to be made in writing, and signed.

Concerning seamen in the merchant service, it is enacted by stat. 2 *G*. 2. *c*. 36. § 1. that it shall not be lawful for any master or commander of any ship or vessel bound to parts beyond the seas [and by stat. 31 *G*. 3. *c*. 39. § 1. the same is extended to masters of vessels trading coastwise] to carry any seaman or mariner, except his apprentice or apprentices, to sea, from any port or place where he or they were entered or shipped, to proceed on any voyage to parts beyond the seas, without first coming to an agreement or contract with such seamen or mariners for their wages, which agreement or agreements shall be made in writing, declaring what wages each seaman or mariner is to have respectively during the whole voyage, or for so long time as he or they shall ship themselves for; and also to express in the said agreement or contract the voyage for which such seaman or mariner was shipped, to perform the same; on pain that the master shall forfeit 5*l*. for every such seaman or mariner, to the use of *Greenwich* hospital, to be recovered on the oath of one witness, before one justice, who shall issue his warrant to bring such master or commander before him; to be levied by distress; and if no distress can be found, to be committed to gaol till he shall pay the same.

Penalty.

Seamen to sign the agreement.

§ 2. Such seaman or mariner shall also sign the agreement in three days after he is entered on board.

By stat. 37 *G*. 3. *c*. 73. § 11. Such agreement shall be agreeable to the purport and effect of a schedule annexed to the act.

How wages to be paid.

By stat. 2 *G*. 2. *c*. 36. § 7. The masters shall pay the seamen, &c. their wages if demanded, in 30 days after the ship's being entered at the custom-house [and in vessels trading coastwise in five days, stat. 31 *G*. 3. *c*. 39. § 5.] (unless there be a covenant to the contrary), or at the time they shall be discharged, which shall first happen, if demanded, deducting the penalties of this act, on pain of paying to each seaman, &c. that shall be unpaid, 20*s*. above his wages, to be recovered by the same means and methods as the wages may be recovered.

But by stats. 2 *G*. 2. *c*. 36. § 8. and 31 *G*. 3. *c*. 39. § 6. No mariner by entering into or signing such agreement shall be deprived of any means for recovery of wages which he may now use; and the master shall be obliged to produce the contract, and not the mariner.

31 G.3. c.39. Where the contract for

By stat. 31 *G*. 3. *c*. 39. § 9. In case of vessels trading coastwise, where the contract for wages shall be by the voyage, and not by the month or other stated time, the penalties shall be ascer-

31 G.3. c.39.

wages is by the voyage and not by the month.

tained in manner following; viz. if the length of the voyage exceed a lunar month, the forfeiture of one month's pay shall be deemed a forfeiture of a sum of money bearing the same proportion to the whole wages as a lunar month shall bear to the whole time spent in the voyage; and in like manner the forfeiture of two days' pay, &c. as two days shall bear to the whole time of the voyage; and if the whole voyage shall not exceed one lunar month, or shall not exceed two days, the said forfeiture shall be deemed a forfeiture of the whole wages.

Agreements exempt from stamps.

§ 10. No agreement made by virtue of this act shall be liable to any stamp duty. And nothing herein shall extend to vessels trading coastwise under 100 tons burthen.

Vessels under 100 tons.

[*Note;* the said act of 2 *G.* 2. *c.* 36. by the 2 *G.* 3. *c.* 31. is made perpetual, and extended to H. M.'s colonies in *America;* the penalties there, to *Greenwich* hospital, to be paid to such person as the commissioners of the admiralty shall direct: master deducting and not paying the same in three months, shall forfeit treble to the said hospital.]

59 G.3. c.58.

Stat. 59 *G.* 3. *c.* 58. "*For facilitating the recovery of the wages of seamen in the merchant service,*" after reciting, that whereas the seamen and mariners employed in the merchant service, and in the coasting trade of this kingdom, are exposed to great difficulties, expence, and inconvenience in suing for or obtaining payment of their wages, in cases of dispute with the masters or owners of vessels in which they may have served; and it is expedient that greater facility should be given for recovery of such wages; Enacts, that after the 1st of *August*, 1819, it shall be lawful for any seaman, mariner, or other person, (except masters or apprentices,) who shall have served on board any ship or vessel trading from any port or place in *England* to ports beyond the seas, or to any other port or place in *G. B.*, by any contract or engagement, in writing or not in writing, and whether the same be by parol, or by deed under seal, or otherwise, in case the master or commander, or other person having the charge of any such ship or vessel, after the expiration of two days from the time of entry of such ship or vessel at the custom house, or from the delivery of her cargo, or from the time when such seamen, or mariner, or other person (except as aforesaid), shall be discharged, which shall first happen, (unless an agreement shall have been entered into to the contrary, and in that case, after the expiration of the time so stipulated or agreed for the payment of such wages as aforesaid,) neglect or refuse to pay any such seaman, mariner, or other person (except as aforesaid), his wages, or any part thereof, to complain (A.) to any justice or justices of the peace residing in or near to the place where such ship or vessel shall have ended her voyage, or been cleared at the custom house, or delivered her cargo, or to any justice or justices of the peace residing in or near to the place where such master or commander, or other person having or taking the charge of any such ship or vessel, or (in case of there being no master or commander, or other person in charge of any such ship or vessel,) where any owner or owners thereof shall then happen to be; and thereupon it shall be lawful for any such justice or justices of the peace respectively, and they are hereby required, upon such complaint made to them upon oath or affirmation, to issue a summons (B.) to such master or commander or other person having or taking the charge of any such ship or

Justices empowered, on complaint of seamen, to hear and settle disputes about wages, not exceeding 20*l.*

A.

B.

vessel, or (in case of there being no master or commander or other person in charge of any such ship or vessel) to such owner or owners thereof, to appear before them at such time and place to be in such summons specified; and upon the party or parties appearing in pursuance of such summons, or not appearing after having been so summoned, the said justice or justices shall examine upon oath such seaman, mariner, or other person (except as aforesaid), or any other witness touching any such complaint, or any dispute respecting such wages, and shall make such order for payment (C.) of so much wages to such seaman, mariner, or other person as aforesaid, as to such justice or justices shall seem reasonable and just; provided the sum in question do not exceed 20*l.* so claimed; and in case of refusal to pay, or non-payment of any sum or sums of money so ordered, by the space of two days next after such order and determination, such justice or justices shall and may issue forth their warrant (D.) to levy the same by distress and sale of the goods and chattels of such master or commander or other person having or taking the charge or command of any such ship or vessel, or (in case of there being no master or commander, or other person in charge of any such ship or vessel,) of any such owner or owners as aforesaid, rendering the overplus (if any there be), after deducting all the costs, charges, and expences of any summonses, informations, complaints, hearings, warrants, and of such distress, and the keeping, appraisement, or sale thereof, or otherwise relating thereto, unto the person or persons whose goods and chattels shall be so distrained and sold; and in case sufficient distress shall not be found for payment and satisfaction of the amount of wages so ordered to be paid by such justice or justices, and the same, with such costs, charges, and expences as aforesaid, shall not be paid within the said period of two days, it shall and may be lawful for such justice or justices of the peace, and they are hereby authorized and required, by warrant (E.) or warrants under their hands and seals, to levy the amount of the wages so ordered to be paid, together with such costs, charges, and expences as aforesaid, on the ship or vessel for the service on board which such wages shall be so ordered to be paid, or any of the tackle, furniture, or apparel thereof, rendering the overplus thereof (if any), after payment of such expences as aforesaid, to the master or commander or owner thereof; and the decision of such justice shall be final, as well on such seaman, mariner, or other person, as upon such master or commander, or other person taking the charge or command of any such ship or vessel, and the owner or owners thereof; save and except in such cases in which an appeal shall be interposed by either party to the High Court of Admiralty, such appeal to be interposed within the space of seven days after the order of the said justice or justices so to be made as aforesaid.

59 G.3. c.58.

C.

On refusal to comply with justice's determination, how wages to be recovered.

D.

E.

Justice's determination to be final, unless appealed against to the High Court of Admiralty.

§ 2. Enacts, " that in case the seaman or mariner, or other person so claiming to be entitled to such wages as aforesaid, or the party or parties who is or are ordered to pay the same, or their agents respectively, shall be dissatisfied with such order and decision of the justice or justices touching such wages as aforesaid, it shall be lawful for either of them respectively, within 48 hours after the making such order as aforesaid, but not afterwards, to give notice in writing to the justice or justices so making such order, of his, her, or their desire of obtaining the judgment of the High Court of Admiralty respecting the said

If seamen or others are dissatisfied, to give notice of intention to appeal.

59 G.3. c.58. wages and the order so made thereon as aforesaid, by delivering the same to such justice or justices, or leaving the same at their last or most usual place of abode; and thereupon the party so resisting or disputing the claim to such wages, or the order to be made by such justice or justices thereon, shall be compelled to proceed within 30 days from the date of such order, by taking out a monition against the adverse party, and shall, on the service of such notice, give good and sufficient bail in double the amount of the wages so ordered to be paid as aforesaid, and which bail shall be taken by a commissioner for taking examinations in prize causes, if there shall be one in the port or place where such difference shall arise or order be made; but if there shall be no such commissioner there, then the said justice or justices who shall pronounce such order, or any other of H. M.'s justices of the peace, are hereby authorized to take the same; and the commissioner, justice or justices, who shall take such bail, shall certify the same according to the form contained in the schedule hereunto annexed, and transmit the same without delay to the High Court of Admiralty, and also a copy of the order so made by such justice or justices, on unstamped paper, certified under the hand or hands of such commissioner, justice or justices, taking the bail as aforesaid, and the same shall be admitted by such Court of Admiralty as evidence in the cause."

Seamen not to be deprived, by any agreements entered into before the passing of this act, of the remedies of former acts.

§ 3. Enacts, that no seaman or mariner, or other person, by entering into or signing any contract or agreement as required by the several statutes now in force for that purpose, or into any covenant, stipulation, or agreement to be comprized in any such contract or agreement, which shall have the effect, or be designed or intended to have the effect, of depriving such seaman, mariner, or other person of the remedies by this act given for recovery of wages so due to him or them as aforesaid, shall be deprived of or hindered from using any method or means for recovery of wages, against any ship, or the masters or owners thereof, which immediately before the passing of this act he might, and which, after the said first day of *August*, he may make use of; and that in all cases where it shall or may be necessary, in resorting to the remedies by this act given for recovery of such wages as aforesaid, that the agreement or agreements in writing aforesaid should be produced before such justice or justices as aforesaid, no obligation shall be on any seaman, mariner, or other person as aforesaid, to produce the same, but such obligation shall lie on the master or commander, or other person having the charge or command, or the owner or owners of the ship or vessel for which the wages shall be demanded; and no seaman or mariner shall fail in any complaint or proceeding before any justice or justices for recovery of wages for want of such agreement or agreements being produced, but shall and may proceed therein as if no such agreement in writing had been made.

Not to deprive seamen of any remedy which may now be resorted to.

§ 4. Enacts, that nothing in this act contained shall extend to deprive any seaman, mariner, or other person as aforesaid, of any remedy which may now be resorted to against any ship or vessel, or the master, &c. or the owner thereof, for the recovery of wages due for serving on board of any such ship or vessel.

Act not to extend to Scotland.

§ 5. Enacts, that nothing in this act contained shall extend to *Scotland*.

§ 6. This act shall be deemed to be a public act; and by § 7. shall continue in force for seven years from the second of *July*, 1819.

59 G. 3. c. 58. Public act. Continuance of the act.

The Schedule referred to by this Act.

County of ——— to wit. } *ON the ——— day of ———, in the year of our Lord one thousand eight hundred and ———, before ———, at ———, in the county of ———,* A. B. *and* C. D. *appeared personally, and produced themselves as sureties for ———, the master of the ship ———, and for the owners thereof, and submitting themselves to the jurisdiction of the said Court of Admiralty of* England, *bound themselves, their heirs, executors, and administrators, for the said master and owners of the said ship, in the sum of ——— each, of lawful money of* Great Britain, *unto* E. F. *a seaman, having served on board the said ship to answer the amount of such wages, as shall be hereafter decreed by the said court to be due to the said* E. F., *according to the tenor of the act in that case made and provided; and unless they shall so do, they hereby consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattels, whereon the same shall be found, to the value of the sum above mentioned.*

This bail was duly taken, acknowledged, and received at the time hereinbefore written, before me the undersigned commissioner, [or, *as the undersigned justice or justices of the peace,*] *and I* [or, *we*] *do believe and consider the persons above mentioned sufficient security for the sum above mentioned.*

By stat. 2 *G.* 2. *c.* 36. § 4. If the mariner *desert* or absent himself after he hath signed the agreement, on application to any justice, from the master, owner, or commander, or other person having charge or command of the ship, such justice may cause him to be apprehended; and if he shall refuse to proceed on the voyage, without sufficient reason to the satisfaction of the justice, the said justice shall commit him to the house of correction, there to be kept to hard labour not exceeding 30 days, nor less than 14 days.

2 G. 2. c. 36. Justices may commit deserters to the house of correction.

And by stats. 2 *G.* 2. *c.* 36. § 6. and 31 *G.* 3. *c.* 39. § 4. If any mariner, not entering into the king's service, shall leave the ship before he shall have a discharge in writing by the master, he shall forfeit one month's pay, to be recovered and disposed of as hereafter is mentioned.

By stat. 31 *G.* 3. *c.* 39. § 3. If any mariner (in the coasting trade), after he shall have entered into such agreement, shall neglect or refuse to proceed on the intended voyage for which he shall have entered, or upon which such ship shall be destined to proceed, he shall forfeit to the owner all wages due at the time of such refusal; and on complaint to any justice by the master, commander, or owner, or other person having charge or command of the ship, he shall issue his warrant to apprehend such mariner; and if he shall refuse to proceed on the voyage agreed upon, or on which the ship shall be destined to proceed, within the time contracted for, without sufficient reason, to the satisfaction of the justice, the justice shall commit him to the house of correction, there to be kept to hard labour for not exceeding 30 days, nor less than 14 days.

31 G. 3. c. 39.

31 G.3. c.39. By § 10. This act not to extend to vessels under 100 tons, or not going to open sea.

45 G.3. c.81. And by stat. 45 *G.* 3. *c.* 81. If, upon being so apprehended, the seaman or mariner (in coasting trade) shall not give sufficient reason for the refusal, to the satisfaction of the justice, he shall commit him (as in stat. 31 *G.* 3. *c.* 39. § 3. specified).

37 G.3. c.73. Seamen deserting from merchant ships trading to or from the West Indies.

By stat. 37 *G.* 3. *c.* 73. § 1. To prevent the desertion of seamen from merchant ships, every seaman, mariner, or other person, who shall desert during the voyage, either out or home from any *British* merchant ship trading to or from H. M.'s colonies in the *West Indies*, shall over and above all punishments, penalties, and forfeitures, to which he is now subject, forfeit all the wages he may be entitled to from the master or owner of the ship on board of which he shall enter immediately after such desertion.

Masters hiring seamen who have deserted.

§ 2. And every master or commander of any such ship, who shall engage any such person knowing him to have deserted from any other ship, shall forfeit 100*l.*

Masters hiring seamen in the West Indies.

§ 3. No such master or commander shall hire, or procure to be hired, any seaman or other person in any port in the said colonies at more than double the monthly wages such person contracted for when he entered on board, being in the same degree, unless authorized by the governor, chief magistrate, collector, or comptroller of such port, in writing under his hand; and all agreements contrary thereto shall be void, and the person hiring or procuring, &c. any seaman, &c. contrary to the intent and meaning of this act, shall forfeit 100*l.*

To have an apprentice for every 100 tons.

§ 4. And the master of every such ship shall have on board at the time the same is cleared out from *G. B.* one apprentice under 17 years of age, and duly indented for three years, for every 100 tons admeasurement of such ship, according to the certificate of registry; and such indenture shall be duly enrolled at the custom house of the port within one month after the date or execution thereof; and such apprentices shall be exempt from serving in H. M.'s navy for that term; and every owner or master neglecting to enrol such indenture in manner aforesaid shall forfeit 10*l.*, to be paid one moiety by the owner, and the other moiety by the master, and to be recovered as hereinafter mentioned.

§ 5. Relates to the masters giving in lists of those who have died during the voyage.

Recovery and application of penalties.

§ 9. All which said penalties may be recovered in the courts at *Westminster;* but such as do not exceed 20*l.* may be recovered before one justice, who shall not reside more than ten miles from the place of abode of the person complained of, who, upon information on oath of one witness, may issue his warrant to bring the offender before him; and in case he shall refuse or neglect to pay such penalty, may levy the same by distress, to be applied one third to *Greenwich* hospital, one third to the seamen's hospital at the port where such forfeiture shall arise; and if there be no such hospital, then to the use and benefit of the old and disabled seamen and their families, to be distributed at the discretion of the persons having the direction of the merchant seamen's fund there, and if there be no such establishment, then by the magistrates or overseer of the poor of such port; and the remaining third to the person who shall inform and sue; and in case no distress can be found, such offender may be committed to the common gaol for three calendar months, or until he shall pay the same.

[There are several other provisions and regulations made by stat. 37 *G.* 3. *c.* 73. relating to seamen in the merchants' service; but being no way connected with the office of a justice of peace, it is quite foreign to this work to insert them here.]

§ VI. Pay may be allotted to maintain Families.

[35 G. c. 28. — 37 G. 3. c. 53. — 46 G. 3. c. 127.]

By stat. 35 *G.* 3. c. 28. § 1. After 1*st May*, 1795, every petty officer and seaman, or landman, non-commissioned officer of marines, and marine, [and by stat. 35 *G.* 3. *c.* 95. the same is extended to boatswains, gunners, and carpenters,] serving or entering on board any vessel of H. M., may allot a certain part of his monthly pay for the maintenance of his wife and children, or mother. 35 G. 3. c. 28. Petty officers, seamen, &c. may allot a part of their pay for the maintenance of their families.

And by stat. 37 *G.* 3. *c.* 53. § 1. 3, 4. An increase of wages is made to such persons, and they are empowered to allot a part of such pay, to be calculated as nearly as may be to equal one half thereof, and according to the following table: — 37 G. 3. c. 53.

Pay.			Allowance.					
Per Month.			*Per* Day.			*Per* Month.		
£.	*s.*	*d.*	£.	*s.*	*d.*	£.	*s.*	*d.*
5	0	0	0	1	9	2	9	0
4	15	6	0	1	8	2	6	8
4	10	0	0	1	7	2	4	4
4	5	6	0	1	6	2	2	0
3	15	6	0	1	4	1	17	4
3	11	6	0	1	3	1	15	0
3	5	6	0	1	2	1	12	8
3	1	8	0	1	1	1	10	4
2	19	6	0	1	0½	1	9	2
2	17	6	0	1	0	1	8	0
2	15	6	0	0	11½	1	6	10
2	13	4	0	0	11	1	5	8
2	10	6	0	0	10½	1	4	6
2	7	6	0	0	10	1	3	4
2	5	6	0	0	9½	1	2	2
2	2	6	0	0	9	1	1	0
2 2	1 0	6 6	0	0	8½	0	19	10
1 1	19 19	6 3	0	0	8	0	18	8
1	17	6	0	0	8	0	18	8
1	15	6	0	0	7½	0	17	6
1	13	6	0	0	7	0	16	4
1 1	11 10	6 6	0	0	6½	0	15	2
1	9	6	0	0	6	0	14	0
1	3	6	0	0	5	0	11	8
1	2	6	0	0	4½	0	10	6
0	19	3	0	0	4	0	9	4
0	14	0	0	0	3	0	7	0

37 G. 3. c. 53. Petty officers, &c. being wounded.

§ 2. And all petty officers, able seamen, ordinary seamen, landmen, and marines, who may hereafter be wounded in action with the enemy, shall receive their full wages and allowances until their wounds are healed; or until (being declared incurable) they shall receive a pension from the chest at *Chatham*, or be admitted into *Greenwich* hospital.

35 G. 3. c. 28. Volunteers, at the time of entering, may allot a part of their pay to be paid as herein specified.

By stat. 35 *G.* 3. *c.* 28. § 2. If any seaman or landman shall voluntarily enter himself with any regulating officer, and shall at the same time declare his name and place of abode, and that he is married, and the name of his wife, and her place of residence, and if he have children, how many, and how many are boys; or that he has a mother then living, and the place of her residence; and that he is willing to allot a part of his wages for their support; then in case his wife or mother reside in *London*, the same shall be paid by the treasurer of the navy; if at *Portsmouth*, *Plymouth*, or *Chatham*, or within five miles thereof respectively, by the clerk of the cheque at those places: elsewhere, by the receiver-general of the land-tax of the county or city, or collector of the customs or excise nearest the residence of such wife or mother.

Regulating officer to make out three declarations of allotment of pay, and order of payment.

And such regulating officer shall make out three declarations of allotment, and three orders of payment, to be triplicates of each other, and shall be in the following form: —

Form.

No. I.

I *A. B.* { Petty officer, / Seaman, / Landman, / Non-commissioned officer of marines, / Marine, } *do hereby declare that I* { *having a* { wife { and one child a boy / and — children — of whom are boys } / *having a* mother - - - - - - - - } } *living at* ———————— *in the county of* ——— { entered this day to serve in his majesty's navy, / now serving on board his majesty's ship, } *have allotted* ——— per *day, out of my wages or pay, for the maintenance of my* { wife { and child / and children } / *mother* - - } *and I do hereby direct you to pay or cause to be paid to* C. D. *my* { wife / mother } *living in the place and county aforesaid, at the end of every twenty-eight days from the date hereof, the sum of* ——— *being at the rate of* ——— per *day out of the wages or pay to grow due to me as a* ——— *in his majesty's navy, a duplicate hereof having already been transmitted to you, signed by three of the commissioners of his majesty's navy, upon her producing a certificate, under the hands of the minister and the churchwardens, or churchwarden, or the elders or elder, of the parish where she resides, that, to the best of their knowledge, the said* C. D. *is my* { wife / mother } *or, in the event of the death of my wife, pay the sum aforesaid to the person who shall by the minister and churchwardens, or churchwarden, or elders or elder,*

of the parish where my said wife resides, be appointed to receive the same, for the maintenance of my {child / children} 35 G. 3. c. 28.

Dated {at —— / on board his majesty's ship ——} *this* —— *day of* ——

Signed A. B.

Witness (if on shore) Thos. Bowling.
Lieut. in his majesty's navy.

(if on board) D. E. *Captain.*
F. G. *Lieut. and signing officer.*

To the Treasurer of his Majesty's Navy.
To the Receiver General of the land tax of ——
To the Collector of the Customs of the port of ——
To the Collector of the Excise at ——
To the Clerk of the Cheque at ——

(*Signed*) H. I. / K. L. / M. N. } *Commissioners of H. M.'s navy.*

Which being numbered and dated, and the blanks filled up, such seaman or landman shall sign the same, and such regulating officer shall also sign as a witness; and if such wife or mother shall then attend in person, such officer shall deliver to her one of the triplicate orders, and shall send the other two to the commissioners of the navy; but if such wife or mother shall not attend, such officer shall send all the said triplicates to the said commissioners and shall specify and mention, opposite to the name of every man so entered, whether he have allotted any part of his pay as aforesaid, and to what amount, together with date of such order.

§ 3. And as often as the commander of any such vessel shall read over the muster of his ship's company, if any such petty officer or person shall declare by word of mouth, or deliver in writing, the name and place of abode of his wife, and number of his children, if he have any, and how many are boys, or that he has a mother living, and the place of her residence, and shall desire that a part of his wages may be paid for their support, the same shall be paid in manner aforesaid. Petty officer, seaman, &c. may allot a part of his pay in like manner.

By stat. 46 *G.* 3. *c.* 127. § 1. It is enacted that every petty officer, seaman, and landman, and every non-commissioned officer of marines, and marine, desiring to allot any pay under stat. 35 *G.* 3. *c.* 28. shall signify such desire by signing his name to two orders or declarations in the form or to the effect required by that act, and directed to the commissioners of H. M.'s navy; which said orders or declarations being witnessed by the captain or commander, and any other of the signing officers of the ship or vessel to which such petty officers, &c. shall belong, shall be forthwith transmitted to the commissioners of the navy, and shall be full authority for them or any three of them to make out and sign a bill in duplicate for payment of the sum allotted by such orders, &c. to the person therein named; and the said commissioners shall thereupon transmit one of such bills to the person to whom the allotment shall be made, and the other of such bills to the person by whom the same is to be paid. 46 G. 3. c. 127.

35 G. 3. c. 28. Declarations and orders to be examined with lists by the navy board.

And by stat. 35 *G*. 3. *c*. 28. § 4. The commissioners of the navy shall examine such declarations and orders in this act mentioned with the lists transmitted by such regulating officer, or commanding officer of any such vessel, and if found right, they shall be filled up and signed by three commissioners, specifying the date; and they shall transmit one of the said declarations and orders to such wife or mother, and another to such receiver-general, collector of the customs or excise, or clerk of the cheque, to whom such order shall be directed, and the third shall be delivered to the treasurer of the navy.

After 28 days from the dates, persons to whom declarations and orders are addressed, to examine the same, and also certificates of ministers, &c. and to pay the sum allotted gratis.

§ 5. At the end of 28 days or more after the date of such declaration and order, the same, together with such certificate as is mentioned therein from the minister and churchwarden of the parish where such wife or mother shall reside, shall be presented to the treasurer of the navy, or other public officer to whom the same is addressed, who shall examine into the truth thereof (upon the oath of such wife or mother, if necessary, which oath such officer is authorized to administer,) and upon his being satisfied, he shall immediately pay to such wife or mother the sum so allotted, without fee or deduction, taking her receipt for the same, signed with her name or mark, and shall sign his name as witness thereto, and shall mark such receipt with the same number as that of her husband's declaration and order, and shall also mark thereon the sum paid, and the date, and the time from whence and up to what time the same so became due, and shall deliver back such declaration and order to such wife or mother; and shall also mark such triplicate in like manner; and at the end of every 28 days afterwards, upon similar application, a like payment shall be made in the same manner.

Wife dying, and leaving children under 14.

§ 6. And if the wife of any such person shall die and leave a child or children under 14, the minister and churchwarden where such wife resided at the time of her death shall certify to the commissioners of the navy the day of her death; and if children are left, the ages of those under 14, as near as they can, and how many are boys; and shall also certify their intention of appointing a fit person resident within such parish to receive that part of the father's wages allotted for the maintenance of his children, in case of his wife's death; and along with such certificate shall also transmit the triplicate of the declaration and order which was in her possession at the time of her death; and if the commissioners of the navy are satisfied of the truth thereof, and that the father is still alive, and in the service of H. M., they shall make out three certificates and orders, which shall be triplicates of each other, in the following form: —

Three certificates and orders to be made out.

Form.

No. I. *WE,* ——— *the minister, and* ——— *churchwardens or churchwarden of the parish of* ———, *in the county of* ———, *do hereby certify and declare, that* ———, *wife of* ———, *a*
{ Petty officer, Seaman, Landman, Non-commissioned officer of marines, Marine, } *serving in his majesty's navy, died on the*
——— *day of* ———, *and was buried in the said parish, where*

35 G.3. c.28.

she had resided —— {months / years} *previous to her death. And we further certify and declare, That there* {is / are} *living in this parish* {a child / children} *under the age of fourteen years of the aforesaid* ———, *late the husband of the aforesaid* ——— *deceased,* {who is a boy, or girl, / of whom —— are boys,} *and we have appointed* ———, *of* ——— *in this parish, to receive such allowance as the aforesaid* ——— *the father has allotted out of his wages or pay due or to become due for his service in the navy, for the maintenance and support of his said* {child / children} *in the event of the death of his wife: And we request that you will give the necessary order, that the wages or pay of the father so allowed as aforesaid shall and may in future be paid to the said* ——— *for the maintenance and support of the* {child / children} *of the said* ——— *under our inspection and direction. Dated at* ——— *this* ——— *day of* ———.

Signed A. B. *Minister.*
C. D. } *Churchwardens.*
E. F. }

To the commissioners of his majesty's navy.

WE, ——— *and* ———, *two of his majesty's justices of the peace in and for the county of* ———, *do hereby certify and attest to the commissioners of his majesty's navy, that the facts set forth in the above certificate are true, to the best of our knowledge and belief, and that the said* ——— *named therein is a fit and proper person to receive the wages allotted by the above* ——— *for the maintenance and support of his* {child / children} *in the event of the death of his wife; and we do hereby approve of him in that respect. Dated at* ———, *this* ——— *day of* ———.

Signed G. H. } *Justices of the peace for the*
I. K. } *county of* ———.

London, *the* —— *day of* ———.

We approve of the above, and allow the same, and order the payment of that part of the wages allotted by the above-mentioned ——— *for the maintenance and support of his* {child / children} *in the event of the death of his wife, to be paid to the above-named* ——— *for that purpose.*

Signed L. M. } *Commissioners of the*
N. O. } *navy.*
P. Q. }

To {
the Treasurer of the navy.
the Receiver-general of the land tax of ——.
the Collector of the customs at the port of ——.
the Collector of the excise at ——.
the Clerk of the cheque at ——.
}

35 G.3. c.28.

To be sent to the minister, &c. and attested by two justices.

And shall send the same to the minister or churchwardens of the parish where the wife died, who shall fill up the blanks, and the minister and churchwardens together shall sign the same, and having procured two justices of the county wherein such parish lies to attest the same, shall return the said three triplicates to the commissioners of the navy, who shall, on the receipt thereof, examine the same, and, if found right, shall mark each of the triplicates with the same number with which the original declaration and order was numbered; and three of the said commissioners shall date and sign their allowance thereof, and shall address each of them to the same public officer to whom the original was addressed, who shall transmit one of them to the person so appointed by such minister and churchwarden and approved by the justices, together with the original declaration and order which was sent to them as aforesaid; and another thereof shall be transmitted to the treasurer of the navy, or other public officer appointed to pay the same, as the case may be; and the third shall be delivered to the treasurer of the navy.

Persons appointed to receive pay for children, may apply for the same, producing certain papers.

§ 7. At the end of 28 days or more from the last payment made to the wife who so died as aforesaid, or from the date of the original declaration and order in case she has received no payment thereon, the person so appointed may apply to such public officer to whom the same is addressed, for payment of what may be due thereon, and shall then produce the original declaration and order, and the certificate of the minister and churchwarden, and attestation by the justices, and allowance by three commissioners as aforesaid; and shall also deliver a certificate from the minister and churchwarden, specifying that there is a child, or the number of children under 14 then living in their parish, distinguishing how many are boys, and their ages as near as they can, and shall in all things proceed in the same manner as before directed; and such payment shall be continued so long as all or any one of such children shall remain under 14, or the father shall live and continue in the king's service; except as hereinafter excepted, where no demand shall have been made within six months.

Seamen, &c. on promotion may increase their pay to their families.

§ 8. And if any such seaman, landman, or marine, shall be promoted, he may increase the allowance out of his pay to his wife, children, or mother, to the amount allowed to his rank as aforesaid; and the same rules and regulations shall be observed as before is directed and prescribed.

Payments to be made for 28 days at a time, except in case of death, &c.

§ 9. And all such payments as aforesaid shall be by even monthly payments of 28 days, and not for any part of a month, except in the event of the death of such wife, or death or discharge of the person serving, or his absenting himself, in which case the same shall be paid up to the day of such death or discharge, or his quitting the service.

Orders to be irrevocable, except in certain cases.

§ 10. Every such order so granted shall be irrevocable, and shall continue and remain in force during the whole time such person shall be entitled to wages, unless the same shall be revoked, or become void in manner hereinafter mentioned.

Wives, &c. to appear personally, unless disabled.

§ 11. The wife or mother, or person appointed to receive such pay, shall appear personally to receive the same, unless disabled by bodily infirmity, the same to be certified by the minister and churchwarden where such person resides, or by the physician, surgeon or apothecary attending her or him, in which case, the

same shall be paid to her or his order in writing, upon producing the original order.

By stat. 46 *G.* 3. *c.* 127. § 3. In every case in which any petty officer, seaman, or landman, non-commissioned officer of marines or marine, to whom any allotment shall have been made payable, at or near the port where the ship or vessel to which he shall belong may have been at the time of making such allotment, shall return to her friends, or to the parish or place to which he shall belong, it shall be lawful for the commissioners of the navy, on receiving a certificate from the minister and churchwardens of the parish or place to which she shall remove of her actual residence, there to alter the place of payment of her allotment accordingly.

46 G. 3. c. 127. Where the wife or mother returns to her place of residence.

By stat. 35 *G.* 3. *c.* 28. § 12. Where no demand shall be made by virtue of any such original order for six calendar months after the date when signed by the commissioners of the navy, in the event of the death of the wife, the same shall be void.

35 G. 3. c. 28. Wife dying, order void, if no demand in six months.

§ 13. If any such regulating officer, or commander of any such vessel, shall unnecessarily neglect or delay to transmit to the navy board such lists as aforesaid, or to transmit such declarations and orders as aforesaid, he shall forfeit 50*l.*, to be recovered as penalties against the laws of customs or excise, and to be paid to the person suing or prosecuting for the same.

Regulating officers, &c. neglecting to transmit lists.

§ 14. If the person to whom any such order shall be addressed shall not have public money in his hands sufficient to answer the same, and shall refuse payment, he shall deliver a note of the cause of his refusal or delay, which shall bear date when such demand was made and refused, and shall appoint thereon some future day, within fourteen days, for the payment thereof. And if on complaint made to the said commissioners there shall appear any unnecessary delay in the payment of such allowance as aforesaid, or that any person employed herein hath taken any fee or reward, three commissioners may fine any such offender not exceeding 50*l.*, to be recovered and applied in manner aforesaid.

Persons to whom orders are addressed, not having money in hand.

Delaying payment or taking fees.

§ 15. If by any neglect or delay in making any such returns as aforesaid, any over-payment shall be made to any such wife, mother, or children, the same shall be deducted from the salary or pay of the officer or person making such default, and shall be applied in replacing the sum so overpaid.

Over-payments to be made good by defaulters.

§ 16. If any person who shall have allotted a part of his wages as aforesaid shall be desirous to revoke the same, he may do so upon his declaring such his intention, and actually revoking the same by a writing under his hand addressed to the commissioners of the navy, accompanied with a certificate from the minister and churchwarden of the parish where his wife shall reside, declaring that in their opinion such person has just and reasonable cause for such revocation; and if such commissioners shall be satisfied thereof, they shall give notice to the treasurer of the navy, or other public officer to whom the order of payment was addressed, directing him to stop all future payment thereon, until such person shall make another order of payment in manner aforesaid.

Orders for payment to wives may be revoked on certificates from ministers, &c.

By stat. 46 *G.* 3. *c.* 127. § 4. If any petty officer, &c. who shall have made any allotment of pay under stat. 35 *G.* 3. *c.* 28., or who shall hereafter make any allotment, shall be desirous of revoking such, and shall signify his intention to his commanding officer and his reasons for so doing, such officer shall, as soon as the same can

46 G. 3. c. 127. Revoking allotments by seamen, &c.

46 G.3. c.127. conveniently be done, communicate such intention, and the reasons given for the same, to the commissioners of the navy, and if they shall be satisfied therewith, they may stop all future payments on any such allotment so revoked: and in every case in which it shall be represented to the commissioners by the minister and churchwardens of the parish or place where any woman receiving any such allotment under stat. 35 G. 3. *c.* 28. or this act, shall reside, and whose husband shall be then serving abroad, that she has conducted herself in such a manner as to be undeserving of support from her husband, they may withhold any further payment on any such allotment.

Wives behaving improperly.

And by § 7. The commissioners may direct the treasurer of the navy, &c. &c. by whom any allotment made conformable to the said former act or to this, shall be payable, from time to time, and as often as the pay of any such petty officer, &c. shall have been increased by any order of H. M. in council, to increase the allowance in the payments which he may thereafter make to the wife or mother of any such petty officer, &c. to a proportion equal in the whole to one-half of the pay of every such petty officer, &c. at the respective times of the making of such payments, and in the same manner as if such declaration and order of allotment had been originally made according to the rate of half the pay of every such petty officer, &c. at the respective times of such payments.

35 G.3. c.28. **If wives desert their children, on a certificate from the minister, &c. other persons may be appointed.**

By stat. 35 *G.* 3. *c.* 28. § 17. If any such wife as aforesaid shall desert or otherwise neglect and leave unsupported and maintained any such child under 14, and who shall for one month become chargeable to any parish, the minister and churchwarden of such parish may certify the fact to the commissioners of the navy, and also their intention to appoint a proper person to receive, and apply to the use of such child, the pay so allowed for the support of her and such child; and if such commissioners be satisfied therewith, they shall proceed to appoint a proper person to receive such pay in the same manner as if such wife had died.

Navy-board to communicate the death of persons who have allotted part of their pay to the person directed to pay it, on penalty of 20*l.*

§ 18. And as soon as it shall appear to the commissioners of the navy that any person who has allotted a part of his pay as aforesaid is dead, or has absented himself, or has quitted the king's service, they shall communicate the same to such public officer as aforesaid, by whom such allotment of wages was directed to be paid, directing him to stop all future payments; and such public officer shall, within two days after the receipt thereof, acknowledge such receipt by letter to the said commissioners, on the penalty of 20*l.*, to be levied as aforesaid.

Minister, &c. to give notice of the death of wives or mothers receiving pay to the navy-board.

§ 19. As soon as it shall come to the knowledge of the minister or any churchwarden of any parish that the wife or mother of any person receiving such allowance as aforesaid is dead, they or one of them shall immediately give notice thereof by letter to the commissioners of the navy, or other public officer from whom she received such allowance, who shall not make any further payment until he receive further directions from the commissioners of the navy thereon.

Payments to be made without deduction, on penalty of 20*l.*

§ 25. And all allotments of wages to be paid in pursuance of this act shall be fully paid, without deduction, although a part thereof be in fractions of the smallest denomination; and every person withholding any part thereof under any pretence whatso-

ever shall forfeit 20*l.*, to be recovered and applied in the manner aforesaid. 35 G.3. c.28.

§ 26, 27. All letters or packets sent by the cashier of the navy, or forwarded by him in the execution of this act, shall be under covers, with the words PURSUANT TO ACT OF PARLIAMENT, THIRTY-FIFTH GEORGE THE THIRD, printed thereon, and he shall write his name under the same. And if he shall send under any such cover any writing, paper, or parcel, other than those relating to the execution of this act, he shall forfeit 100*l.*, to be recovered and applied in manner aforesaid.

Letters to be free of postage.

Penalty of sending other things under such covers.

§ 30. And if any person shall falsely make, forge, or counterfeit, or procure, &c. or willingly assist in, &c. any such declaration or order, or any certificate or receipt hereinbefore described or mentioned, or utter, or publish as true any such forged declaration, &c., in order to enable any person to obtain any such wages so allotted as aforesaid, he shall be guilty of felony without benefit of clergy.

Forging orders for payment, &c.

§ VII. Pensions, &c. to Widows.

[49 G. 3. c. 35. — c. 45.]

Stat. 49 *G.* 3. *c.* 35. Enacts certain regulations as to the mode of payment of pensions to the poor widows of commission and warrant officers of the royal navy; which was a charity instituted by H. M. *G.* 2. in the sixth year of his reign.

49 G.3. c.35. Payment of pensions to widows of officers of the navy.

And by § 9. If any person shall wilfully and knowingly personate, or falsely assume the name or character of, or procure any other person to personate, &c. or falsely assume the name, &c. of any widow entitled or supposed to be entitled to any such pension aforesaid in order to receive the same or any part thereof, such person shall on conviction be deemed guilty of felony and be transported for not less than 14 years.

Punishment for personating widows entitled to pensions.

Fourteen years' transportation.

The same act provides certain forms of bills for the payment of the pensions; and also enacts § 6. that upon certificates of infirmity of the widow by the minister and churchwarden, the money may be paid to her order.

And by § 10. If any person shall knowingly and wilfully forge or counterfeit, or cause or procure, &c. or knowingly and wilfully act or assist in forging, &c. the name or handwriting of any widow entitled to any such pension, or if (*a*) any person required under this act to sign any remittance bill, certificate, voucher, or receipt, in relation to the payment of any such pension, for and in order to the receiving or obtaining any money on any such pension, or shall utter as true any false, forged, or counterfeited remittance bill, &c. knowing the same to be forged or counterfeited, with an intent to defraud any person whatsoever, he shall be adjudged guilty of felony, and may be transported for a term not exceeding 14 years.

Punishment for forging bills or certificates, &c.

(*a*) *qu.* 'of.'

Fourteen years' transportation.

By stat. 49 *G.* 3. *c.* 45. Certain provisions are also enacted for the payment of allowances in the compassionate list of the navy, and also of officers of the royal marines on half pay; and by § 10. and 11. the same punishment of transportation for personating or procuring to be personated the name, &c. of persons entitled, or supposed to be entitled, to such allowance, or of any such officer on half pay in order to receive such allowance or half pay as is

49 G.3. c.45. Payment of allowances on the compassionate list of the navy, and to half-pay to officers of the marines.

49 G. 3. c. 45. above enacted in stat. 49 *G.* 3. *c.* 35. § 9.; and also as to forging and counterfeiting the name or handwriting of such person or officer, or of any person required by this act, to sign any remittance, bill, &c. &c. as by stat. 49 *G.* 3. *c.* 35. § 10.

[*Note;* the law relating to the recovery of such wages, so far as provision is made for the same by any act of parliament, and as far as justices of peace are concerned, is treated of under title **Servants**, *post.*]

Of seamen begging, see stat. 43 *G.* 3. *c.* 61. Vol. III. tit. **Military Law**, § I. 16. p. 394.

§ VIII. Payment of Wages, by Remittance Bills, &c.

[1 & 2 G. 4. c. 49.]

1&2 G. 4. c. 49. By stat. 1 & 2 *G.* 4. c. 49. intituled "*An Act for making further regulations in respect to the payment by remittance bill of the wages of petty officers, seamen, and marines in the royal navy; and for extending the provisions of an act made in the 55th year of his late Majesty, relating to the execution of letters of attorney and wills of petty officers, seamen, and marines in His Majesty's navy.*"

Petty officers and seamen, &c. may obtain payment of their wages by remittance bills, whether serving or paid off.

§ 1. After reciting stats. 31 *G.* 2. *c.* 10. — 32 *G.* 3. *c.* 33., and 32 *G.* 3. *c.* 67., it is enacted, that petty officers and seamen, non-commissioned officers of marines, and marines, shall and may be enabled and empowered to obtain payment of their wages by remittance bill or bills to themselves or to their wives or relations, as provided by the said acts, whether they, such petty officers and seamen, non-commissioned officers of marines, and marines, be still serving H.M., or discharged or paid off from the service; which remittance bills shall be in the following form, or to the like effect:—

Form of remittance bill.

By virtue of the act second George *the fourth, chapter* ——.
No. ————

———— *day of* ————.

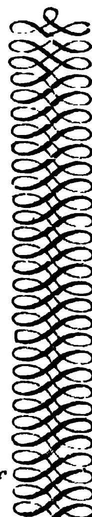
£. s. d.

Sir,

PAY to ———— *of* ————, *on producing and delivering the duplicate hereof, the sum of* ————, *being on account of the wages of* ————, *belonging to His Majesty's ship the* ——, *if the same be demanded within six calendar months from the date hereof, otherwise you are to return this bill to the Treasurer of the Navy, at the pay office of the navy*, London.

To { *The receiver general of the land tax in the county of* ————.
The collector of the customs at the port of ————.
The collector of the excise at ————.
The clerk of the treasurer of the navy at ————. }

(*Signed*) ————, *Commissioner of the navy.*
(*Attested*) ————, *Clerk to the treasurer of the navy.*



N. B. — *The personating, or falsely assuming, or procuring any other to personate or falsely assume the name or character of any inferior officer or seaman, non-commissioned officer of marines, or marine, or the wife or relation, executor, administrator, or creditor of any such officer or seaman, non-commissioned officer of marines, or marine, in order to receive the wages due to such officer or seaman, non-commissioned officer of marines, or marine, is made felony without benefit of clergy, by the 55th* G. 3. c. 60. 1&2 G. 4. c. 49.

The officer to whom the aforegoing bill is addressed is directed by the above mentioned acts of parliament to examine the duplicate thereof when presented, and enquire into the truth by the oath of the person presenting the same, and being satisfied, he is to testify to that purpose upon the back of the bill, and pay the amount without fee or reward; but if he shall not be able to pay the amount from not having public money sufficient in his hands, he shall note the cause of his refusing payment, and shall appoint another day, within one month at farthest from that time, and shall deliver back the bill so noted to the person presenting it; and if upon complaint to the commissioners of the board of revenue on whose officer such bill shall have been drawn, it shall appear that such officer hath unnecessarily delayed payment, taken any fee, or made any deduction whatsoever, he shall be fined in a sum not exceeding fifty pounds.

Navy Office. { To be paid out of money received by the right honourable the treasurer of His Majesty's navy for the payment of seamen's wages.

I HAVE examined the duplicate hereof, and enquired into the truth of it, on the oath of ———, *and am satisfied that* ——— *is the real person mentioned therein.*

———, *Collector.*

Dated at ———, *this*
——— *day of* ———.

§ 2. Enacts, that the provisions, regulations, penalties, and forfeitures contained in stat. 55 *G.* 3. *c.* 60., intituled, "*An Act to repeal several acts relating to the execution of letters of attorney and wills of petty officers, seamen, and marines in His Majesty's navy, and to make new provisions respecting the same,*" shall be applicable to the remittance bills authorized by this act. Provisions of 55 G. 3. c. 60. applicable to remittance bills extended to this act.

§ IX. Letters of Attorney and Wills, &c.

[55 G. 3. c. 60. — 59 G. 3. c. 59. — 1 & 2 G. 4. c. 49.]

By stat. 55 *G.* 3. *c.* 60. The several acts relating to the execution of letters of attorney and wills of petty officers, seamen, and marines, are repealed, and new provisions made. 55 G. 3. c. 60.

By § 2. No will made by any petty officer or seaman, non-commissioned officer of marines, or marine, before entry into H.M.'s service, Mode of executing letters of

55 G.3. c.60.

attorney and wills.

shall be valid to pass or bequeath any wages, pay, prize money bounty money, or other allowances of money, to accrue due for or in respect of the service of any such petty officer, &c. and no letter of attorney to be hereafter made by any petty officer, &c. who shall be or shall have been in the service of H. M., his heirs or successors, or by the executors or administrators of any such petty officer, &c. shall be valid, or sufficient to empower any person to receive any wages, pay, or other allowance of money of any kind, due or to grow due for the service of any such petty officer, &c. on board any ship or vessel of H. M., unless such letter of attorney shall be declared to be revocable by the express words thereof; and no such letter of attorney shall be valid or sufficient to empower any person to receive any such wages, &c.; nor shall any will made or to be made by any such petty officer, &c. who shall be or shall have been in the service of H. M., be valid, or sufficient to bequeath any such wages, &c. or any prize money, &c., unless such letter of attorney or will shall contain the name of the ship to which the person executing the same belonged at the time, or to which he last belonged; or in case such letter of attorney be made by an executor or administrator, shall contain the name of the ship to which his or her testator or intestate last belonged in his life-time; and also in every case a full description of the degree of relationship or residence of the person in whose favour, either as attorney or executor, the same shall be granted or made; and also the day of the month and year, and the name of the place when and where the same shall have been executed; nor shall any such letter of attorney or will be valid, or sufficient for the purposes aforesaid, unless the same respectively shall be executed and attested in the manner hereinafter mentioned; viz. 1st. If made by any petty officer or seaman, whilst they belong to, or be borne on the books of any ship or vessel belonging to H. M., unless such letter of attorney or will shall be executed in the presence of and attested by the commanding officer of such ship for the time being. 2nd. If made in any of H. M.'s hospital ships, or in any military or merchant hospital, or at any sick quarters at home or abroad, unless such letter of attorney or will shall be executed in the presence of and attested by the governor, physician, surgeon, assistant surgeon, agent, or chaplain of any such hospital or sick quarters, or by the commanding officer, &c., of such military or merchant hospital, or other sick quarters, or one of them. 3d. If made by any such petty officer or seaman, &c., or marine, on board of any ship in the transport service, or in any merchant ship, unless the same shall be executed in the presence of and attested by some commission or warrant officer, or chaplain in H. M.'s navy, or some commission officer or chaplain belonging to H. M.'s land forces, royal marines, or the governor, physician, surgeon, &c., or agent of any hospital in H. M.'s naval or military service, who may happen to be then on board of such transport or merchant vessel. 4th. If any such letter of attorney or will shall be made by any such petty officer, &c., after he shall have been discharged; or by the executors or administrators of such petty officer, &c., unless the same (if the party shall then reside in *London* or *Westminster*, or within the bills of mortality) shall be executed in the presence of and attested by the inspector of seamen's wills, &c., or his assistant or

clerk; or unless the same (if the party shall then reside within the distance of seven miles from any port or place where the wages of seamen are paid) shall be executed in the presence of and attested by one of the clerks in the office of the treasurer of the navy resident at such port or place; or unless the same (if the party shall then reside at any other place in *G.B.* or *Ireland*, or in the islands of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*) shall be executed in the presence of and attested by one of H. M.'s justices of the peace, or by the minister, or officiating minister or curate of the parish or place in which such letter of attorney or will shall be executed; or unless the same (if the party shall then reside in any other part of H. M.'s dominions, or any colony, plantation, settlement, fort, factory, or any other foreign possession or dependency, of H. M., or any settlement within the charter of the *East India* company) shall be executed in the presence of and attested by some commission or warrant officer or chaplain of H. M.'s navy, or commission officer of royal marines, or commissioner of the navy, or naval storekeeper, or minister of the church of *England* or *Scotland*, or a magistrate or principal officer, residing in any such island, colony, plantation, settlement, fort, factory, or other possession or dependency of H. M., or of the *East India* company (or if the party shall then reside at any place not within H. M.'s dominions, or any settlement, fort, factory, or other foreign possession or dependency of H. M., or any settlement of the *East India* company), unless the same shall be executed in the presence of and attested by the *British* consul or vice-consul, or some officer having a public appointment or commission, civil, naval, or military under H. M.'s government, or by a magistrate or notary public, of or near the place where such letter of attorney or will shall be executed. 55 G.3. c.60.

§ 3. Letters of attorney, &c. executed in foreign prisons valid, if attested as therein mentioned.

§ 4. Seaman's will not to be in same instrument with letter of attorney.

§ 5. Wills, &c. to be entered on muster-book.

§ 6. Letters of attorney and wills to be examined by inspector, and approved if found authentic.

§ 7. No letter of attorney passed by inspector until certificate in prescribed form be produced.

§ 8. Directs that whenever the executor or executrix of any such will, &c., shall have occasion to require a probate of such will, in order to claim any wages, prize money, bounty, or other allowance money, he or she shall previously obtain a certificate from two housekeepers of the parish in which he or she shall reside, certifying "that such person is an inhabitant of their parish, and the person described as executor," &c. And in event of testator's death, the minister, officiating minister, or curate of the parish in which the said executor or executrix reside, shall upon being applied to for his signature to the certificate at the foot of the said check, examine such executor, &c., and such two inhabitant householders of the parish, as may be disposed to sign the first certificate on the said check, touching the claim of the said executor, &c.; and being satisfied of his or her being the person described as executor, &c., the said executor, &c., shall subscribe the application (the blank being filled up agreeably to the

Certificate to be obtained by executor.

55 G.3. c.60.

truth), in the presence of the said minister, &c.; and the said two inhabitant householders shall also subscribe the said certificate (the blanks therein being filled up, &c.,) in the like presence; for which purposes, the said parties shall attend at such time and place, as the said minister, &c. shall appoint; and the said minister, &c. shall sign the second certificate, (the blanks being filled up, &c.;) and the said executor, &c. shall, before his examination, or signing the said application, pay to the said minister, &c. a fee of 2*s*. 6*d*. for his trouble; and the said application and certificates, being completed according to the directions hereby given, the same shall be transmitted by the said minister, &c., by the general post, addressed to the treasurer or to the paymaster of the navy, *London*, &c. &c.

§ 9. Ministers on receiving commissions, to procure the execution, and transmit them to the pay-office. Residence of the nearest receiver-general of the land tax, &c. to be specified, &c. in order that probate may be obtained.

Wages of persons dying intestate to be paid only upon administration obtained in the manner herein mentioned.

§ 10. And when any petty officer or seaman, &c. shall die intestate, leaving any wages, pay, prize money, &c. &c. due to him, the same shall not be paid unto any representatives but upon letters of administration to be obtained in the following manner, *viz.* the person claiming administration shall send a letter to the inspector, stating his place of abode, and the parish in which situate, the name of the deceased, the name of the ship to which he belonged, that he has been informed of his death, and requesting the inspector to give directions to enable him to procure letters of administration; upon receipt whereof the inspector shall send by post under cover to the minister, &c. of the parish wherein the claimant shall reside, a petition in the words and figures following, or to the like effect: —

No. ——

LIST.

1st Degree	- widow.	' Sir,
2d ———	- child.	*Having obtained information*
3d ———	- father.	*that* A. B. *born about the year*
4th ———	- mother.	———, *at* ———,' *and be-*
5th ———	- brother *or* sister.	*longing to His Majesty's ship*
6th ———	- grandfather, *or* grandmother.	———, *about the year* ———, *died at* ——— *in the month of*
7th ———	- uncle, aunt, nephew, *or* niece.	——— *one thousand eight hundred and* ———, *without leav-*
8th ———	- cousin german.	*ing any will, to the best of my*
9th ———	- cousin german once removed.	*knowledge and belief, I now apply for a certificate to enable me to*
10th ———	- second cousin.	*obtain letters of administration*

to his effects, being his lawful ——— *and sole* [or *one of his*] *nearest of kin; no one, to the best of my knowledge and belief, of a nearer degree being living at the time of the death of the said deceased, who died a bachelor* [or *widower*]. — *My place of abode is* ———. C. D.

We hereby certify, that we personally know the above subscribing C. D. *and believe what he* [or *she*] *has stated to be true.* 55 G. 3. c. 60.

E. F.
G. H.
both inhabitant householders of the parish of ———,
in the county of ———.

I hereby certify, that I have examined the above-named C. D. *who claims administration to* A. B., *late a* ———, *belonging to His Majesty's ship* ———, *and also the above named* E. F. *and* G. H., (*inhabitant householders of this parish*) *as to their knowledge of the said* C. D. *and of his* [or *her*] *right to administer to the effects of the said* A. B., *and that I am satisfied with their answers, and have seen the said* C. D. *sign the above application or petition, and also seen the said* E. F. *and* G. H. *sign the above certificate.*

The said C. D. *is* ——— *feet* ——— *inches high,* ——— *complexion,* ——— *eyes,* ——— *hair,* ——— *age,* ——— *particular marks.*

At ——— *this* ——— *day of* ——— 18 . P. Q. *Minister.*

N. B. If the person applying is the widow of the party deceased, she must forward an extract from the parish register, or some other authentic proof of her marriage.

If the deceased died after he had left the naval service, an extract from the parish register of his burial, or some other authentic proof of his death, must likewise be sent to this office.

If the person applying knows any proctor in *Doctors' Commons,* she [*or* he] is desired to mention his name, that he may be employed in obtaining the letters of administration.

This application, when filled up and attested, is to be sent by the general post, under cover, directed to the treasurer *or* to the paymaster of H. M.'s navy, *London.*

And the said inspector shall at the same time send to such minister, &c. a letter, acquainting him with the nature of the claim, and the steps to be taken thereon; and also to the claimant, advising him of the forwarding of the said petition, and directing him to take such steps as are hereinafter directed, for substantiating his claim; and upon receipt of the said petition, &c. the said minister, &c. shall examine the claimant, and also such two inhabitant householders, touching the right of such claimant to administration, according to the degree of relationship stated in such petition, and being satisfied of such right, the person claiming such administration shall fill up the several blanks in the said paper, and transmit it (as before) to *London.*

§ 11. But if the minister, &c. shall reject the said petition or paper, for want of proof to his satisfaction that the claimant is the person entitled to administration, he shall state his reasons for such rejection, on such petition or paper, and forthwith return the same (as hereinbefore directed). **Minister not satisfied with claim, and rejecting the petition.**

And by § 12. The claimant is required to state, in the form which he subscribes for being transmitted to the inspector, the state of affinity to the deceased, in which he or she stood; *and that no one, to the best of his or her knowledge and belief, was living at the time of the intestate's death, nearer of kin.*

55 G.3. c.60. In the succeeding sections, proctors and others are rendered liable to penalties for neglect or omission of duty, for extortion and other offences, by action or information in the courts at *Westminster;* persons committing, or suborning persons to commit perjury (in any of the matters directed to be verified by oath or affirmation by the statute,) are made liable to the punishment thereof by the laws in force: Persons committing forgery of any names of ministers or householders, as directed by any of the forms prescribed in the statute, with intent to defraud any persons, are subjected to transportation for life, fourteen years, or seven years, at the discretion of the court before whom tried; and persons personating petty officer, &c. or wife, widow, executor, creditor, &c. of such petty officer, &c., or forging, or assisting to forge any letter of attorney, will, bill, certificate, assignment, or other power or authority, &c. with intent to defraud any person, or knowingly taking a false oath in order to obtain any probate of a will, or to receive any money in respect of the services of any such petty officer, &c. with like intent, are declared guilty of felony, without benefit of clergy.

Sums not exceeding 20*l.* to be paid on certificate.

By § 18. Where any sum not exceeding 20*l.* shall be due for the services of any petty officer or seaman, non-commissioned officer of marines or marine deceased; in order that the widow, next of kin, or person named as executor in any will or testament of such petty officer or seaman, non-commissioned officer of marines, or marine, may not be put to great expense, it shall be lawful for the inspector of seamen's wills, after having taken the previous steps to ascertain the justness of their respective claims to probate or administration, or administration with will annexed, in like manner as he has been hereinbefore directed to take, in cases of granting certificates to *Doctors' Commons,* for letters of administration, or letters of administration with will annexed, or for probates of wills, to issue or cause to be issued a certificate in the following form, or to the like effect;

Act of parliament, 55 G. 3.

No. —.

Certificate.

Navy pay office, ——— day of .

HAVING duly examined a claim presented to me as inspector of seamen's wills, &c. by A. B. *of ——— in the county of ———, stating that he* [or, *she*] *is the ——— of* C. D., *originally of ———, and lately a seaman* [or, *marine*] *belonging to His Majesty's ship ———, and who died at ———, on the ———; I therefore hereby certify, that I believe the contents as therein stated to be true; and also, that the said* A. B. *is entitled to receive whatever wages, prize money, and other allowances of money, may be due to the said deceased, provided the amount thereof does not exceed the sum of 20l.*

Remittance bill to be addressed to ——— at ———.

J. P. Inspector.

To the Deputy Paymaster of the Navy, [who shall take care to note hereon all sums which he shall pay, or cause to be paid, upon the authority of the same.]

Which certificate so prepared shall be delivered over by him to the said widow, next of kin, or person named as executor, if he, she, or they shall be present; but if he or they shall not be present, but be and reside at a distance, then and in that case the said inspector shall specify and describe upon the said certificate, the revenue officer residing as aforesaid nearest to such widow, next of kin, or person named as executor, and shall deliver such certificate to the deputy paymaster. 55 G.3. c.60.

Stats. 1 & 2 *G*. 4. *c*. 49. § 3. Enacts, "that if any person shall cause or procure any other person to sign or subscribe, or utter or publish, any such false petition or application to the treasurer or paymaster of H. M.'s navy for the time being as is mentioned in stat. 55 *G*. 3. *c*. 60., for any of the purposes mentioned in that act: or if any person shall cause or procure any other person to demand or receive any wages, pay, prize money, bounty money, or other allowance of money, due or supposed to be due for the services of any such petty officer or seaman, non-commissioned officer of marines or marine, upon or by virtue of any certificate from the inspector of seamen's wills or his assistant, knowing such certificate to have been obtained by false representations or pretences; every such person shall, on being convicted of any such offence in due form of law, be transported beyond the seas for the term of seven years, in like manner as persons convicted of felony."

1&2G.4. c.49. Persons procuring others to sign or utter false applications to the treasurer or paymaster of the navy, or procuring persons to apply for pay, &c. on false certificates, shall be liable to transportation for seven years.

§ 4. "If any person or persons shall cause or procure any other person to utter or publish as true, any false, forged, counterfeited, or altered letter of attorney, bill, ticket, certificate purporting to be a certificate from the inspector of seamen's wills and powers, or his assistant, assignment, last will, or other power or authority whatsoever mentioned in that act, for the purpose and with the intention therein also mentioned, knowing the same to be false, forged, counterfeited, or altered; or shall cause or procure any other person to demand or receive any wages, pay, prize money, bounty money or other allowances of money, due or supposed to be due for or in respect of the services of any such petty officer, seaman, non-commissioned officer of marines, or marine, or other person, as in that act mentioned, performed, or supposed to have been performed on board any of H. M.'s ships or vessels, upon or by virtue of any probate of any will or letters of administration, knowing the will on which such probate shall have been obtained to be false, forged, and counterfeited, or knowing the probate of such will or such letters of administration as last aforesaid to have been obtained by means of any such false oath as in that act mentioned, with the intention therein also mentioned; every such person or persons so offending, and being thereof convicted according to due course of law, shall be deemed guilty of felony, and shall suffer death as a felon without benefit of clergy."

Persons procuring others to utter forged letters of attorney, or to apply for pay on probates of forged wills, &c. guilty of felony.

Stat. 59 *G*. 3. *c*. 59. after reciting that stat. 55 *G*. 3. *c*. 60. § 18. enacts, that where any sum not exceeding 20*l*. shall be due for the services mentioned in 55 *G*. 3. *c*. 60. of any petty officer or seaman, non-commissioned officer of marines, or marine, *who being born a bastard*, shall have died intestate, it shall be lawful for the inspector of seamen's wills, upon inspection of any grant from the crown of such person's effects, to issue a certificate in the form provided by the said act in the case of any sum not exceeding

59 G.3. c.59. Extended to cases where bastard shall die intestate.

59 G.3. c.59. 20*l.* being due for services; and all the provisions of the said act in those cases shall be extended to all cases of certificates issued by the inspector upon grants from the crown of any sum not exceeding 20*l.* due for the services of any petty officer or seaman, non-commissioned 'officer of marines, or marine, *who being born a bastard* shall have died intestate.

55 G.3. c.60. Treasurer and commissioners to act as justices.

By stat. 55 *G.* 3. *c.* 60. § 55. For the more speedy and effectual bringing to justice persons who shall commit any offences punishable under the authority of this act, it is enacted, that it shall be lawful for the treasurer and commissioners of the navy for the time being, or any one of them, from time to time in all places whatever, to exercise and execute the office and duty of a justice of the peace, to all intents and purposes whatsoever, in causing any person who shall be charged with any of the offences mentioned in this act, to be apprehended, committed, and prosecuted for the same; and all constables, headboroughs, keepers of gaols and prisons, and all other officers whatever, are hereby respectively required from time to time diligently to execute, and obey all such warrants as shall be directed, issued, or given to them, by any one or more of the persons aforesaid, touching any of the matters and things hereinbefore contained; and al' the laws and statutes of this realm, now in force for the ease, safety, and protection of justices of the peace in the execution of their office, shall extend to the treasurer and commissioners of H. M.'s navy, acting in the execution of this act, and to all constables and headboroughs, or other peace officers, or persons acting under the warrant or authority of the said treasurer or commissioners, as fully as if the same were herein re-enacted, as to the safety and protection of the said treasurer and commissioners, and the constables, headboroughs, or other peace officers or persons acting under their or any of their warrant or authority.

A.

(A.) Complaint of a Mariner employed in the Merchant Service against his Master for refusing to pay him his Wages, on Stat. 59 *G.* 3. *c.* 58. *ante*, *p.* 88.

County of ——— } *THE information and complaint of* A. I., *late of* ———, *in the county of* ———, *mariner, exhibited before me* J. P. *esquire, one of his majesty's justices of the peace in and for the county of* ———, *the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* —

Who on his oath says, that on the ——— *day of* ——— *in the year of our Lord one thousand eight hundred and* ——— *he was hired by* A. O. *of* ———, *in the county aforesaid, mariner, to serve him in the merchant service* [or *coasting trade*, as the case may be], *as a seaman,* [*sailor, mariner,* or as the case may be,] *on board the ship* ———, *of* ——— *aforesaid, for the term of* ——— [or as the case may be,] *for the wages of* ——— *a month,* [or as the case may be] *that he the said* A. J. *has duly performed the said service for the term of two months, when he was discharged from the said ship by the said* A. O. [or as the case may be,] *at* ———, *in the said county of* ———, *where the said ship now lies, and that he the said* A. O. *refuses to pay to him the said* A. I. *the sum of* ———, *being the wages justly due unto him the said* A. I. *for the*

said service; and thereupon he the said A. I. *prays that justice may be done, and that the said* A. O. *may be summoned before me the justice aforesaid, to answer unto the said complaint.*

Before me, A. I.
J. P.

(B.) Summons thereon. B.

County of ———. } To the Constable of ———, in the said county.

WHEREAS information and complaint have been made unto me, J. P. *esquire, one of his majesty's justices of the peace in and for the said county of* ——— *upon the oath of* A. I., *late of* ———, *in the county of* ———, *mariner, that on the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———, *he was hired by* A. O. *of* ———, *in the county of* ——— *aforesaid, to serve him in the merchant service* [or *coasting trade,* as the case may be,] *as a seaman,* [*sailor, mariner,* or as the case may be,] *on board the ship* ———, *of* ——— *aforesaid, for the term of three months,* [or as the case may be,] *for the wages of* ——— *a month,* [or, as the case may be], *that he the said* A. I. *has duly performed the said service for the term of two months, when he was discharged from the said ship by the said* A. O. [or, as the case may be] *at* ———, *in the said county of* ———, *where the said ship now lies, and that he the said* A. O. *refuses to pay to him the said* A. I. *the sum of* ———, *being the wages justly due unto him the said* A. I. *for the said service: These are therefore to command you forthwith to summon the said* A. O. *to appear before me at* ———, *in the said county of* ———, *on* ——— *the* ——— *day of this present month of* ———, *at the hour of* ——— *in the forenoon of the same day, to shew cause why the said wages should not be paid. And be you then there to certify what you shall have done in the premises. Given under my hand and seal the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———.

(C.) Order for Payment. C.

County of ——— } *WHEREAS information and complaint have been made unto me,* J. P. *esquire, one of his majesty's justices of the peace in and for the said county of* ———, *upon the oath of* A. I. *late of* ———, *in the county of* ———, *mariner, that on the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———, *he, the said* A. I. *was hired by* A. O. *of* ———, *in the county of* ——— *aforesaid, mariner, to serve him in the merchant service* [or *coasting trade,* as the case may be,] *as a seaman,* [*sailor, mariner,* or as the case may be,] *on board the ship* ———, *of* ——— *aforesaid, for the term of three months,* [or as the case may be,] *for the wages of* ——— *a month;* [or as the case may be,] *and that he the said* A. I. *hath duly performed the said service for the term of two months, when he was discharged from the said ship by the said* A. O. [or as the case may be] *at* ———, *in the said county of* ———, *where the said ship now lies, and that he the said* A. O. *doth refuse*

to pay to him the said A. I. *the wages justly due unto him for the said service; and whereas the said* A. O. *having appeared before me in pursuance of my summons for that purpose, hath not proved to me that the said wages justly due unto the said* A. I. *as aforesaid, have been duly paid unto him the said* A. I., *nor hath shewed to me any just cause why the said wages should not be paid, and hath not paid the same;* [or, *whereas it appears to me, upon the oath of* A. C., *constable of* ——— *aforesaid, that he the said* A. C. *by virtue of my summons to him directed did duly summon the said* A. O. *to appear before me at a certain time and place therein specified, to shew cause why the said wages should not be paid; and the said* A. O. *hath neglected to appear according to the said summons, and hath not shewed any cause why the said wages should not be paid, and hath not paid the same,*] *I therefore having duly examined into the truth and matter of the said complaint, by the oaths of the said* A. I., *and of the witnesses produced by him and the said* A. O. *respectively,* [or as the case may be,] *and upon due consideration had thereof, do hereby adjudge, determine, and order, and that he the said* A. O. *upon due notice hereof, do pay or cause to be paid to him the said* A. I. *the sum of* (a) ——— *which appears to me to be just and reasonable, to be paid by him the said* A. O. *to him the said* A. I., *as and for his wages so due unto him as aforesaid. Given under my hand and seal the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ——.

J. P.

D. (D.) Warrant of Distress. (*b*)

County of ——— } To the Constable of ———.

WHEREAS A. I., *late of* ———, *in the county of* ———, *mariner, has complained unto me,* J. P. *esquire, one of his majesty's justices of the peace in and for the county of* ———, *that on the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ——, *he was hired by* A. O. *of* ———, *in the county of* ——— *aforesaid, mariner, to serve him in the merchant service* [or *coasting trade,* as the case may be,] *as a seaman,* [*sailor, mariner,* or as the case may be,] *on board the ship* ———, *of* ——— *aforesaid, for the term of* —— *for the wages of* —— *a month,* [or as the case may be,] *that he the said* A. I. *hath duly performed the said service for the term of* ———, *and that the said* A. O. *has refused to pay unto him the said* A. I. *the wages justly due unto him for such service in the said ship so done and performed by him the said* A. I. *for him the said* A. O. *And whereas the said* A. O. *having appeared before me in pursuance of my summons for that purpose, has not proved to me that the wages, justly due unto the said* A. I. *as aforesaid, have been paid to him the said* A. I., *nor has shewed any just cause why the same should not be paid, and has not paid the same:*

(*a*) This must not exceed 20*l*. (*59 G.3. c.58.* § 1.) A separate order for costs should be made according to the precedent A., in Vol. I. title Costs, and served at the same time. See note (*a*) in the next page.

(*b*) But not to be issued till two days after making the order for payment of wages. See stat. *59 G.3. c.58.* § 1. *ante*, p. 89.

[or, *and whereas the said* A. O. *has been duly summoned by me to shew cause why the said wages should not be paid; but he the said* A. O. *has neglected to appear according to the said summons, and has not shewed any cause why the said wages should not be paid, and has not paid the same.*] *I therefore, the said justice, upon due examination and consideration had thereof, on the* ——— *day of* ——— *now last past, by writing under my hand and seal, did thereupon adjudge, determine, and order, that he the said* A. O. *upon due notice thereof, should pay, or cause to be paid to him the said* A. I. *the sum of* ———, *which appeared to me to be just and reasonable to be paid by him the said* A. O. *to him the said* A. I. *as and for his wages so due unto him as aforesaid; and whereas it appears to me that the said* A. O. *on the said* ——— *day of* ——— *now last past, had due notice of my said order, and that due demand of the said sum of* ——— *was then made of him the said* A. O. *by him the said* A. I. *at* ———, *in the said county of* ———, *in which port the said ship now lies; but that he the said* A. O. *did not then pay nor has yet paid the same nor any part thereof: These are therefore to command you to make distress of the goods and chattels of the said* A. O. *or other person having or taking the charge or command of the said ship or vessel called the* ———; *and if within the space of* ——— *days next after such distress by you made, the said sum of* ———, *together with the reasonable charges of taking and keeping the said distress shall not be paid, that then you do sell the said goods and chattels, so by you distrained, and out of the money arising by the sale thereof, that you pay the said sum of* ——— *unto him the said* A. I., *rendering the overplus* [*if any there be*] *after deducting all the costs* (a), *charges, and expenses of any summonses, informations, complaints, hearings, warrants, and of such distress, and the keeping, appraisement, or sale thereof, or otherwise relating thereto, unto the person or persons whose goods and chattels shall be so distrained and sold. And in case sufficient distress shall not be found for payment and satisfaction of wages so ordered to be paid, and the same with such costs, charges, and expenses as aforesaid, shall not be paid, that then you do certify the same to me, together with the return of this warrant. Given under my hand and seal the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———.

J. P.

(E.) Warrant of Distress for the same on the *Ship, &c.* in case other sufficient distress is not found, &c. E.

County of ——— } To the Constable of ———.

WHEREAS A. I., *late of* ———, *in the county of* ———, *mariner, has complained unto me,* J. P. *esquire, one of his majesty's justices of the peace in and for the county of* ———, *that on the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———, *he was hired by* A. O. *of* ———, *in the county of*

(a) An order for costs, according to stat. 18 *G.*3. c.19., should be made by the magistrate at the time of issuing the order for payment of the wages, and this according to the precedent (A.) in Vol. I. *tit.* Costs. This appears to be the safest way of proceeding, and the constable will then see clearly what he has to levy.

——— *aforesaid, mariner, to serve him in the merchant* [or *coasting trade*, as the case may be] *as a seaman*, [*sailor, mariner*, or as the case may be,] *on board the ship* ———, *of* ——— *aforesaid, for the term of* ——— *for the wages of* ——— *a month*, [or as the case may be,] *that he the said* A. I. *hath duly performed the said service for the term of* ———, *and that the said* A. O. *has refused to pay unto him, the said* A. I., *the wages justly due unto him for such service in the said ship, so done and performed by him the said* A. I. *for him the said* A. O. *And whereas the said* A. O. *having appeared before me in pursuance of my summons for that purpose, has not proved to me that the wages justly due unto the said* A. I. *as aforesaid, have been paid to him the said* A. I., *nor has shewed any just cause why the same should not be paid, and has not paid the same;* [or, *and whereas the said* A. O. *has been duly summoned by me to shew cause why the said wages should not be paid; but he the said* A. O. *has neglected to appear according to the said summons, and has not shewed any cause why the said wages should not be paid, and has not paid the same;*] *I therefore, the said justice, upon due examination and consideration had thereof, on the* ——— *day of* ——— *now last past, by writing under my hand and seal, did thereupon adjudge, determine, and order, that he the said* A. O., *upon due notice thereof, should pay, or cause to be paid to him the said* A. I. *the sum of* ———, *which appeared to me to be just and reasonable to be paid by him the said* A. O. *to him the said* A. I. *as and for the wages so due unto him as aforesaid; and whereas it appears to me that the said* A. O., *on the said* ——— *day of* ——— *now last past had due notice of the said order, and that due demand of the said sum of* ——— *was then made of him the said* A. I. *at* ———, *in the said county of* ———, *in which port the said ship now lies: but that he the said* A. O. *did not then pay, nor has yet paid the same, nor any part thereof. And whereas, on the* ——— *day of* ———, [here set the date of the foregoing Warrant of Distress in words at length,] *I the said justice did issue my warrant to the constable of* ———, *to make distress of the goods and chattels of the said* A. O. *or other person having or taking the charge or command of the said ship or vessel called the* ———, *and to levy the said sum of* ———, *and to pay the same according to the directions of the statute. And whereas it duly appears unto me the said justice, as well upon the oath of the said constable of* ——— *as otherwise, that he the said constable of* ———, *has used his best endeavours to levy the said sum of* ——— *on the goods and chattels of the said* A. O. *as aforesaid, and other person having or taking the charge or command of the said ship or vessel called the* ———, *but that no sufficient distress can be so found whereon to levy the same. These are therefore to command you to levy the amount of the wages so ordered to be paid, together with the costs, charges, and expenses of the summonses, informations, complaints, hearings, and warrants of distress respecting the same, on the said ship or vessel, for the service on board which such wages have been and are so ordered to be paid, or on any of the tackle, furniture, or apparel thereof; and if within the space of* ——— *days next after such distress by you made, the said sum for wages so ordered to be paid, and the said costs, charges, and expenses as aforesaid, together with the reasonable charges of taking the said distress, shall not be paid, that then you do sell the said ship, tackle, furniture, or*

apparel thereof, so by you distrained, and out of the money arising by such sale, that you pay the said amount of the wages so ordered to be paid, together with the costs, charges, and expenses of the summonses, informations, complaints, hearings, and warrants of distress respecting the same, unto him the said A. I., *rendering the overplus thereof (if any) upon demand, unto the master, or commander, or owner thereof, the reasonable charges of taking, keeping, and selling the said distress, being thereout first deducted. Given under my hand and seal, the* —— *day of* ——, *in the year of our Lord one thousand eight hundred and* ——.

Search Warrant.

[22 G. 3. c. 58.]

ALTHOUGH it hath been usual for justices to grant general warrants, to search all suspected places for stolen goods, and there is a precedent in *Dalton* requiring the constable to search *all such suspected places as he and the party complaining shall think convenient;* yet such practice is generally condemned by the best authorities. **General warrants condemned.**

Thus Ld. *Hale*, in his Summary of Pleas of the Crown, says, a general warrant to search all places for felonies or stolen goods, is not good. *Hale's Sum.* 93.

Mr. *Hawkins* says, I do not find any good authority, that a justice can justify sending a general warrant, to search all suspected houses in general for stolen goods: because such warrant seems to be illegal in the very face of it; for it would be extremely hard to leave it to the discretion of a common officer, to arrest what persons, and search what houses he thinks fit; and if a justice cannot legally grant a blank warrant for the arrest of a single person, leaving it to the party to fill up, surely he cannot grant such a general warrant, which might have the effect of an hundred blank warrants. 2 *Haw. c.* 13. § 10. 17.

Again, Ld. *Hale*, in his History of the Pleas of the Crown, expresseth himself thus: I do take it, that a general warrant to search in all suspected places is not good, but only to search in such particular places, where the party assigns before the justice his suspicion, and the probable cause thereof; for these warrants are judicial acts, and must be granted upon examination of the fact. 2 *Hale*, 150.

And therefore I take those general warrants dormant, which are many times made before any felony committed, are not justifiable, for it makes the party to be in effect the judge; and therefore searches made by pretence of such general warrants give no more power to the officer or party, than what they may do by law without them. 2 *Hale*, 150.

Likewise, upon a *bare surmise*, a justice cannot make a warrant to break any man's house, to search for a felon, or for stolen goods; for the justices, being created by act of parliament, have no such authority granted to them by any act of parliament; and it would be full of inconvenience that it should be in the power of any justice of the peace, being a judge of record, upon a bare sug- **House not to be broken open upon bare surmise.**

gestion, to break the house of any person, of what state, quality, or degree soever, either in the day or night, upon such surmises. 4 *Inst.* 177.

But may on oath of suspicion.

But in case of a complaint, and oath made of goods stolen, and that the party suspects that goods are in such house, *and shews the cause of his suspicion*, the justice of peace may grant a warrant to search in those suspected places mentioned in his warrant, and to attach the goods, and the party in whose custody they are found, and bring them before him, or some other justice of peace, to give an account how he came by them, and farther to abide such order as to law shall appertain. *Vide Dalt. c.* 169. p. 403. 2 *Hale*, 113. 150.

22 G.3. c.58. Power to search for stolen goods.

By stat. 22 *G.* 3. *c.* 58. § 1. "One justice of the peace on complaint made before him on oath, that there is reason to suspect that stolen goods are knowingly concealed in any dwelling-house, out-house, garden, yard, croft, or other place or places, may, by warrant under his hand and seal, cause every such dwelling-house, &c. to be searched in the day-time: and the person or persons knowingly concealing the said stolen goods or any part thereof, or in whose custody the same or any part thereof shall be found, he, she, or they, being privy thereto, shall be deemed guilty of a misdemeanor (and may be brought before a justice of peace, and made amenable to answer the same by warrant,) and being thereupon convicted by due course of law shall be punished by fine, imprisonment, or whipping, as the quarter-sessions (who are empowered to try such offenders,) or any other court before whom he shall be tried, shall think fit to inflict.

Ld. *Hale* says, it is fit that these warrants to search do express that search be made in the day-time; and though I will not say that they are unlawful without such restriction, yet they are very inconvenient without it; for many times, under pretence of searches made in the night, robberies and burglaries have been committed; and at best it creates great disturbances. 2 *Hale*, 150.

May be in the night.

But in case not of probable suspicion only, but of positive proof thereof, it is right to execute the warrant in the night-time, lest the offenders and goods also be gone before morning. *Barl. Search War.*

Warrant to be directed to the constable.

Furthermore, such warrant ought to be directed to constables, or other public officer, and not to any private person; though it is fit the party complaining should be present and assistant, because he knows his goods. 2 *Hale*, 150.

As to power of constables to act in any place within the jurisdiction of the justices who grant the warrant, see stat. 5 *G.* 4. *c.* 18. § 6. Vol. I. *tit.* Arrest, § iv. p. 219.

Execution.

So much for *granting* a search warrant; next touching the *execution* of it.

To enter, the doors being open.

Whether the stolen goods are in a suspected house or not, the officer and his assistants in the day-time may enter, the doors being open, to make search, and it is justifiable by the warrant. 2 *Hale*, 151.

The doors being shut.

If the door be shut, and upon demand it be refused to be opened by them within, if the stolen goods be in the house, the officer may break open the door. 2 *Hale*, 151.

Whether the goods are found or not.

If the goods be not in the house, yet it seems the officer is excused that breaks open the door to search, because he searched

by warrant, and could not know whether the goods were there till search made: but it seems that the party that made the suggestion is punishable in such case; for as to him the breaking of the door is *in eventû* lawful or unlawful, to wit, lawful if the goods are there; unlawful, if not there. 2 *Hale*, 151.

And by stat. 22 *G.* 3. *c.* 58. § 3. it is enacted, "that every constable, headborough, or tithingman, in every county, city, town corporate, riding, division, liberty, or other place, where there shall be officers, and every beadle within his ward, parish, or district, and every watchman, during such time only as he is on his duty, shall and may apprehend, or cause to be apprehended, all and every person and persons, who may reasonably be suspected of having, or carrying, or any ways conveying, at any time after sun-setting, and before sun-rising, any goods or chattels suspected to be stolen, and the same, together with such person or persons, as soon as conveniently may be, to convey or carry before any justices of the peace for the county, city, town corporate, riding, division, liberty, or place aforesaid, to be dealt with according to law; (See Vol. I. p. 16, 17. 217.) and such person and persons, so carrying or conveying such goods or chattels, knowing the same to have been stolen, and being thereof convicted by due course of law, shall be deemed and held to be guilty of a misdemeanor, and, on conviction as aforesaid, shall be imprisoned for any time not exceeding six calendar months, nor less than three calendar months." See 1 *Chitt. Crim. L.* 64., and § 1. *ante*, p. 116.

22 G. 3. c. 58. Constables, &c. may apprehend persons suspected of having any stolen goods between sun-setting and sun-rising, &c.

On the *return* of the warrant executed, the justice hath these things to do.

Return of the warrant.

As touching the *goods* brought before him, if it appears they were not stolen, they are to be restored to the possessor; if it appear they were stolen, they are not to be delivered to the proprietor, but deposited in the hand of the sheriff or constable, to the end the party robbed may proceed, by indicting and convicting the offender, to have restitution. 2 *Hale*, 151.

Goods how to be disposed of.

As touching the *party* that had the custody of the goods; if they were not stolen, then he is to be discharged; if stolen, but not by him, but by another that sold or delivered them to him, if it appear that he was ignorant that they were stolen, he may be discharged as an offender, and bound over to give evidence as a witness against him that sold them; if it appear he was knowing they were stolen, he must be committed or bound over to answer the felony. 2 *Hale*, 152.

Party how to be disposed of.

Form of a Search Warrant.

County of ——— } To the constable of ———.

WHEREAS it appears to me J. P. *esquire, one of the justices of our lord the king, assigned to keep the peace in the said county, by the information on oath of* A. I. *of* ——— *in the county aforesaid, yeoman, that the following goods, to wit,* ——— *have, within* ——— *days last past, by some person or persons unknown, been feloniously taken, stolen, and carried away, out of the house of the said* A. I. *at* ——— *aforesaid, in the county aforesaid: and*

that the said A. I. *hath probable cause to suspect, and doth suspect, that the said goods or part thereof, are concealed in the dwelling-house of* A. O. *of* ——— *in the said county, yeoman; These are therefore, in the name of our said lord the king, to authorise and require you, with necessary and proper assistants, to enter in the day-time into the said dwelling-house of the said* A. O. *at* ——— *aforesaid, in the county aforesaid, and there diligently to search for the said goods; and if the same, or any part thereof, shall be found upon such search, that you bring the goods so found, and also the body of the said* A. O. *before me, or some other of the justices of our said lord the king, assigned to keep the peace in the county aforesaid, to be disposed of and dealt withal according to law. Given under my hand and seal at* ——— *in the said county, the* ——— *day of* ———, *in the* ——— *year of the reign of* ———.

Seditious Meetings. See **Riot, Rout,** &c. *ante.*

Self-defence. See Vol. II. *tit.* **Homicide.**

Self-murder. See Vol. II. *tit.* **Homicide.**

Servants.

Note. Under this title are also comprehended Labourers, Journeymen, Artificers, and other Workmen.

Concerning the *Settlement* of **Servants**, see tit. **Poor.**

§ I. *Who may be compelled to serve, and for what Term.*
[5 El. c. 4.]

II. *Characters of Servants.*
[32 G. 3. c. 56.]

III. *Rating of Wages.*
[53 G. 3. c. 40.]

IV. *Time of Working for Labourers.*
[5 El. c. 4.]

V. *Working in Harvest.*
[5 El. c. 4.—13 & 14 C. 2. c. 12.]

VI. *Testimonial.*
[5 El. c. 4.]

VII. *Servant fleeing into another Shire.*
[5 El. c. 4.]

VIII. *Servant assaulting his Master.*
[5 El. c. 4.]

IX. *How far the Master is allowed to beat his Servant.*

X. *How far the Master may beat another in Defence of his Servant, or the Servant in Defence of his Master.*

XI. *Servants firing Houses.*
[6 Ann. c.31.—14 G. 3. c. 78.]

XII. *Servant stealing his Master's Goods.*
[3 G. 4. c. 38.]

XIII. *Disputes between Silk Masters and their Workmen.*
[13 & 14 C. 2. c. 15.—20. C. 2. c. 6.—8 & 9. W. c. 36.—5 G. 4. c. 66.—c. 95.]

XIV. *Disputes between Clothiers and their Workmen.*
[7 J. 1. c. 7.—13 G. 1. c. 23.—29 G. 2. c. 33. —30 G. 2. c. 12.—14 G. 3. c. 25.—58 G. 3. c. 51.]

XV. *Disputes between Masters and Servants in the Woollen, Linen, Fustian, Cotton, and Iron Manufactures.*
[1 Ann. st. 2. c. 18.—13 G. 2. c. 8.—58 G. 3. c. 51.]

XVI. *Disputes between Masters and their Workmen, in the Leathern Manufactures.*
[13 G. 2. c. 8.—58 G. 3. c. 51.]

XVII. *Disputes between Masters and their Workmen, in the making of Hats, or in the Woollen, Linen, Fustian, Cotton, Iron, Leather, Fur, Hemp, Flax, Mohair, or Silk Manufactures.*
[12 G. 1. c. 34.—13 G. 1. c. 23.—22 G. 2. c. 27. —14 G. 3. c. 44.—15 G. 3. c. 14.—17 G. 3. c. 11.—c. 55.—c. 56.—22 G. 3. c. 40.— 58 G. 3. c. 51.—4 G. 4. c. 46.]

XVIII. *Disputes between Masters and their Workmen, in the Bone and Thread-Lace Manufactory.*
[19 G. 3. c. 49.]

XIX. *Disputes between Masters and their Workmen, in the Manufactures of Clocks and Watches.*
[27 G. 2. c. 7.]

XX. *Disputes between Paper-Makers and their Workmen.*
[5 G. 4. c. 95.]

XXI. *Disputes between Masters and Servants in Husbandry, Artificers, Calico Printers, Handicraftsmen, Miners, Colliers, Keelmen, Pitmen, Glassmen, Potters, and other Labourers.*
[20 G. 2. c. 19.—27 G. 2. c. 6.—31 G. 2. c. 11. —6 G. 3. c. 25.—57 G. 3. c. 122.—58 G. 3. c. 51.—4 G. 4. c. 34.]

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§ I. Who may be compelled to serve, and for what Term.

[5 El. c. 4.]

5 Eliz. c. 4. A quarter's warning to be given.

By stat. 5 *El. c.* 4. § 5. 6. (many of the provisions of which are repealed by stat. 49 *G.* 3. *c.* 109. See Vol. I. *tit.* Apprentices.) No person which shall retain any servant shall put away his said servant, and no person retained *according to this statute* (*a*) shall depart before the end of this term, unless it be for some reasonable cause, to be allowed before one justice or mayor or other chief officer of the town corporate wherein the master inhabiteth, to whom the party grieved shall complain: and no master shall put away any *such* servant at the end of his term, nor shall any *such* servant depart at the end of his term, without one quarter's warning, on pain hereafter ensuing.

Who are compellable to serve in husbandry.

§ 7. Every person between the ages of 12 and 60, not being lawfully retained, nor apprentice with any fisherman or mariner, haunting the seas; nor being in service with any kidder or carrier of corn, grain, or meal, for provision of the city of *London;* nor with any husbandman in husbandry; nor in any city, town corporate, or market town, in any of the arts limited by this statute to have apprentices; nor being retained by the year, or half year at least, for getting, melting, fining, working, trying, making of any silver, tin, lead, iron, copper, stone, sea coal, stone coal, moor coal, or charcoal; nor being occupied in the making of glass; nor being a gentleman born; nor being a student or scholar in any of the universities, or in any school; nor having an estate of inheritance, or for term of life, of a clear 40*s*. a year; nor worth 10*l*. in goods; nor having a father and mother then living, or other ancestors, whose heir apparent he is, having lands of 10*l*. a year, or goods worth 40*l*.; nor being necessary or convenient officer or

(*a*) But the power of the justices under this act is confined to servants employed in husbandry. *Rex* v. *Inhabitants of Hulcot*, 6 *T. R.* 583.

servant lawfully retained as aforesaid; nor having a convenient farm or holding, whereon to employ his labour; nor being otherwise lawfully retained according to the true meaning of this statute—shall be compelled to be retained to serve in husbandry by the year with any person that keepeth husbandry, and will require any such person to serve, within the same shire where he shall be so required. 5 Eliz. c.4.

Penalty on putting away a servant without a quarter's warning.

§ 8. If any person, after he hath retained any servant, shall put him away before the end of his term, unless it be for some reasonable cause, to be allowed as is aforesaid (viz. § 5.): or shall put him away at the end of his term without a quarter's warning; unless he can prove by two witnesses such reasonable cause, or such quarter's warning, before the judges of assize, justices of the peace in sessions, or the mayor and two aldermen (or two discreet burgesses if there are no aldermen) in corporation, he shall forfeit 40*s*.

Punishment of a servant not performing his duty in service or departing therefrom.

§ 9. If any servant retained according to this statute shall depart from his service before the end of his term, unless it be for some reasonable cause to be allowed as aforesaid, or at the end of his term depart without a quarter's warning before two witnesses; or if any person bound to serve in husbandry or other arts, &c. above-remembered, by the year or otherwise, do on request refuse to serve for the wages to be limited by this statute; or promise to serve, and do not serve; then on complaint and conviction before two justices, or mayor, or other head officer, and two aldermen (or two discreet burgesses where there are no aldermen,) he shall be committed to ward until he shall be bound to serve and continue for the wages that shall be then limited; and to be discharged upon his delivery, without any fee to the gaoler.

Application thereof.

§ 39. The forfeitures not otherwise appointed by this act shall be half to the king, and half to him that shall sue in any of the king's courts of record, or before the justices of oyer and terminer, or before any other justice before remembered: and the said justices, or two of them (1 Q.), and the said mayors or other head officers, shall have power to hear and determine all offences against this statute, as well upon indictment in the sessions of the peace, as upon information, action of debt, or bill of complaint: and shall yearly, in *Michaelmas* term, estreat the forfeitures into the exchequer, in like manner as other estreats.

§ 45. And all fines and forfeitures which shall arise by reason of any offence in this act, within any city or town corporate, shall be levied by such person as shall be appointed by the mayor or other head officer, to the use of the same city or town corporate, as other fines and forfeitures by the charter.

Women compellable to serve.

§ 24. Two justices (or the mayor or other head officer of a town corporate, and two aldermen, or two discreet burgesses, if there be no aldermen) may appoint any such woman as is of the age of 12 years and under 40, and unmarried, and forth of service, as they shall think meet to serve, or be retained or serve by the year, or by the week or day, for such wages, and in such reasonable sort and manner as they shall think meet; and if any such woman shall refuse so to serve, they may commit her to ward, until she shall be bounden to serve as is aforesaid.

Women marrying.

If a woman who is a servant shall marry, yet she must serve out her time, and her husband cannot take her out of her master's service. *Dalt. c.* 58. *p.* 139. *Wood's Inst. b.* 1. *c.* 6.

A servant's marrying is no reasonable cause for discharge, for it is not a misdemeanor, and nothing else is a cause. *Com. Dig. tit.* "*Justices of Peace,*" (*B. b.* 3.) *p.* 587.

Retainer to be for a year.

If a person retain a servant generally, without expressing any time, the law shall construe it to be for one year, for that retainer is according to law. 2 *Inst.* 42. *Burr. S. C.* 299. 513.

And if a man retaineth another, except the retainer be according to the statute, it seemeth to be void; unless it be by indenture, and then being by deed, he is bound by his covenant. *Dalt. c.* 58. *p.* 140.

Retainer in the beginning of service.

By the retainer, the servant is in service presently by the law, although he cometh not into his master's service in deed: for the retainer is the proper inchoation of the service. *Bro. Ab. Labourers, pl.* 9. *c.* 11. *Dalt. c.* 58. *p.* 140.

Infant hiring.

An infant of 12 years of age shall be bound by his covenant to serve in husbandry. 2 *Fitz. N. B.* 168.

A woman of such age shall also be bound to serve in husbandry by her covenant.

If a man take an infant or other, out of another's service, he shall be punished, although the infant or other were not retained.

An infant by his covenant shall be bound to serve in husbandry, although he may spend 40*s*. or twelve marks by the year.

Married person hiring.

If a married man and his wife do bind themselves to serve, they shall not be compelled to serve according to their covenant or agreement. *Dalt. c.* 58. *p.* 139.

Servant falling sick,

If a servant retained for a year happen within the time of his service to fall sick, or to be hurt or disabled by the act of God, or in doing his master's business, yet the master must not therefore put such servant away, nor abate any part of his wages for such time. *Dalt. c.* 58. *p.* 141.

Sickness does not put an end to the service on the part of the servant, neither does it authorize the master to put him away. *Per Le Blanc J. R.* v. *Sudbrooke,* 1 *Smith's Rep.* 59.

or insane.

The rule seems the same in case of the servant's becoming insane within the time of his service. *Per Lord Kenyon, R.* v. *Inhabitants of Sutton,* 5 *T. R.* 659. *Rex* v. *Inhabitants of Hulcot,* 6 *T. R.* 587.

§ II. Characters of Servants.

[32 G. 3. c. 56.]

32 G. 3. c. 56.

By stat. 32 *G.* 3. *c.* 56. "For preventing the counterfeiting of certificates of the characters of servants." After reciting that whereas many false and counterfeit characters of servants have either been given personally, or in writing, by evil disposed persons being, or pretending to be, the master, mistress, retainer, or superintendant of such servants, or by persons who have actually retained such servants in their respective service, contrary to truth and justice, and to the peace and security of H. M.'s subjects: and whereas the evil herein complained of is not only difficult to be guarded against, but is also of great magnitude, and continually increasing, and no sufficient remedy has hitherto been applied; it is therefore enacted, "that if any person or persons shall falsely personate any master or mistress, or the executor, administrator, wife, relation, housekeeper, steward,

Any person personating a master, &c. or giving a false

agent, or servant of any such master or mistress, and shall either personally, or in writing, give any false, forged, or counterfeited character to any person offering him or herself to be hired as a servant into the service of any person or persons, then, and in such case, every such person or persons so offending shall forfeit and undergo the penalty or punishment hereinafter mentioned." 32 G.3. c.56. character to a servant;

§ 2. Enacts, that "if any person or persons shall knowingly and wilfully pretend, or falsely assert, in writing, that any servant has been hired or retained for any period of time whatsoever, or in any station or capacity whatsoever, other than that for which or in which he, she, or they shall have hired or retained such servant in his, her, or their service or employment, or for the service of any other person or persons, then, and in either of the said cases, such person or persons, so offending as aforesaid, shall forfeit and undergo the penalty or punishment hereinafter mentioned." or asserting that a servant has been hired for a period of time, or in a particular station;

§ 3. Enacts, that "if any person or persons shall knowingly and wilfully pretend, or falsely assert in writing, that any servant was discharged or left his, her, or their service at any other time than that at which he or she was discharged or actually left such service, or that any such servant had not been hired or employed in any previous service, contrary to truth, then, and in either of the said cases, such person or persons shall forfeit and undergo the penalty or punishment hereinafter mentioned." or was discharged at any other time, or had not been hired in any previous service; contrary to the fact;

§ 4. Enacts, that "if any person shall offer himself or herself as a servant, asserting or pretending that he or she hath served in any service in which such servant shall not actually have served, or with a false, forged, or counterfeit certificate of his or her character, or shall in anywise add to or alter, efface, or erase any word, date, matter, or thing contained in or referred to in any certificate given to him or her by his or her last or former actual master or mistress, or by any other person or persons duly authorized by such master or mistress to give the same, then, and in either of the said cases, such person or persons shall forfeit and undergo the penalty or punishment hereinafter mentioned, and in that behalf provided." or any person offering himself as a servant, pretending to have served where he has not served, or with a false certificate, or who shall alter any certificate;

§ 5. Enacts, that "if any person or persons having before been in service shall, when offering to hire himself, herself, or themselves as a servant or servants in any service whatsoever, falsely and wilfully pretend not to have been hired or retained in any previous service as a servant, then, and in such case, such person or persons shall forfeit and undergo the penalty or punishment hereinafter mentioned, and in that behalf provided." or who having been before in service shall pretend not to have been in such service;

§ 6. Enacts, that "if any person or persons shall be convicted of any or either of the offence or offences aforesaid, by his, her, or their confession, or by the oath of one or more credible witness or witnesses, before two or more justices of the peace for the county, riding, division, city, liberty, town, or place, where the offence or offences shall have been committed (which oath such justices are hereby empowerd and required to administer), every such offender or offenders shall forfeit the sum of 20*l.*, one moiety whereof shall be paid to the person or persons on whose information the party or parties offending shall have been convicted, and the other moiety thereof shall go and be applied for the use of shall, on conviction, forfeit 20*l.* Application of forfeiture.

32 G. 3. c. 56. Persons not paying the penalty with costs, or not giving notice of appeal, &c. may be committed.

the poor of the parish wherein the offence shall have been committed; and if the party who shall have been so convicted shall not immediately pay the said sum of 20*l.* so forfeited, together with the sum of 10*s.* for the costs and charges attending such conviction, or shall not give notice of appeal, and enter into recognisance in the manner hereinafter mentioned, and in that behalf provided, such justices shall and may commit every such offender to the house of correction, or some other prison of the county, riding, division, city, liberty, town, or place, in which he or she shall have been convicted, there to remain, and be kept to hard labour, without bail or mainprize, for any time not exceeding three months, nor less than one month, or until he or she pay the said sum so forfeited, together with such costs and charges as aforesaid."

Informer, though entitled to part of the penalty, a competent witness.

§ 7. And whereas it most frequently happens, that no person is present at or privy to the giving of the character of a servant, except the persons by and to whom the same is given; it is enacted, that the informer, in any of the cases aforesaid, shall be, and shall be deemed and taken to be, a good and competent witness in law, notwithstanding he shall be entitled to a part of the said penalty where the same shall be levied as aforesaid.

Offenders discovering accomplices before information, indemnified.

§ 8. Provided always, that if any servant or servants, who shall have been guilty of any of the offences aforesaid, shall, before any information has been given or lodged against him, her, or them, for such offence, discover and inform against any person or persons concerned with him, her, or them, in any offence against this act. so as such offender or offenders be convicted of such offence in manner aforesaid, every such servant or servants, so discovering and informing, shall thereupon be discharged and indemnified of, from, and against all penalties and punishments to which, at the time of such information given, he, she, or they might be liable by this act, for or by reason of such his, her, or their own offence or offences.

Justices may cause convictions to be drawn up in the following

§ 9. And, for the more easy and speedy conviction of offenders against this act, all justices of the peace, before whom any person shall be convicted of any offence against this act, may cause the conviction to be drawn up in the following form of words, or in any other form of words to the same effect, as the case shall happen; *videlicet,*

Form.

BE it remembered, that on the ——— day of ———, in the year of our Lord ———, A. B. *is convicted before us ———, two of his majesty's justices of the peace for the county of ———* [specifying the offence, and the time and place when and where the same was committed, as the case shall be]. *Given under our hands and seals, the day and year aforesaid.*

Parties aggrieved may appeal to the quarter session, where the matter may be finally determined in a summary way, &c.

§ 10. Provided always, that if any person shall think himself or herself aggrieved by any thing done in pursuance of this act, such person may appeal to the justices of the peace at the next general or quarter sessions of the peace to be held for the county or place wherein the cause of complaint shall have arisen, such appellant entering into a recognisance, with two sufficient sureties, in the sum of 20*l.* each, conditioned to try such appeal, and abide the order of, and to pay such costs as shall be awarded by such justices at such general or quarter sessions, upon due

proof of such notice being given as aforesaid, and of the entering into such recognisance; which said justices shall hear and finally determine the causes and matters of such appeal in a summary way, and award such costs to the parties appealing or appealed against as they the said justices shall think proper; and the determination of such general or quarter sessions shall be final, binding, and conclusive, to all intents and purposes; and no conviction or order made concerning any matters aforesaid, or any other proceedings to be had, touching the conviction or convictions of any offender or offenders against this act, shall be quashed for want of form, or be removed by *certiorari*, or any other writ or process whatsoever, into any of H. M.'s courts of record at *Westminster*.

32 G. 3. c. 56.

Proceedings not to be quashed for want of form, or removed by *certiorari*.

In an action on the case, the declaration stated that the plaintiff's wife having been retained by the defendant as a servant, was dismissed from the said service; that after she was so dismissed she had applied to a person of the name of *Stewart*, for the purpose of being retained and hired as a servant; that Mrs. *Stewart* was ready and willing to have hired and taken her into her service, if the defendant would have given her a character, and such character was satisfactory; that it was the duty of the defendant by law to have given her such character as she deserved; and then assigned a breach, that the defendant, not regarding such her duty, wholly refused to give her any character whatever; by reason whereof the said Mrs. *Stewart* refused to hire her into her said service. Plea of not guilty. On opening the pleadings, Ld. *Kenyon* C. J., addressing himself to the plaintiff's counsel, said, Can you make any thing of this action? I have read an abstract of the record; it is impossible to support this action. Upon the plaintiff's counsel replying, that he had no case, his lordship proceeded to observe, There is no case; there is no foundation in law for this action. What one's real feeling would dictate is one thing; but can you say that there is a legal obligation on one to give a servant a character at all? You are, indeed, to take care, if you do give a character, to give a true one; but you are not bound to give a character at all. I am confident that this action cannot be maintained. *Carrol* v. *Bird*, *Sittings at Westm. after T. T.* 40 *G.* 3.—3 *Esp.* 201. *S.C.* And see *Ashover* v. *Brampton*, *Cald.* 11. *post.*

A master is not bound to give a servant a character.

An action was tried at the sittings after *Trinity* term, 1792, at *Guildhall*, against a person who had knowingly given a false character of a man to the plaintiff, who was thereby induced to take him into his service. But this servant soon afterwards robbed his master of property to a great amount, for which he was executed. And the plaintiff recovered damages against the defendant to the extent of his loss. This was an action of great importance to the public, and there can be no doubt but it was founded on strict principles of law and justice. *Parley* v. *Freeman*, 1 *Blac. Com.* 432. *Christian's Note*.

And when a master gives a bad character of a servant, the latter cannot maintain an action against the former for defamation, unless the account given be malicious as well as false. *Bull. N. P.* 8.

Even though the master make specific charges of fraud. *Weatherstone* v. *Hawkins*, 1 *T. R.* 110.

§ III. Rating of Wages.

[53 G. 3. c. 40.]

53 G. 3. c. 40.

By stat. 53 *G.* 3. *c.* 40. After reciting the several acts of 5 *El.* *c.* 4., 1 *J.* 1. *c.* 6., and the *Scotch* acts 22 parliament *J.* 1. and 1 parliament *Car.* 2., and that it is expedient that the powers given by the said acts, and by various other acts passed in the parliaments of *Scotland*, to justices of the peace and magistrates of cities and boroughs, to rate wages or fix prices for work, for artificers, labourers, and craftsmen, should be repealed: it is therefore enacted, that so much of the said recited acts, and of each of them, or of any other act of parliament in force in *Scotland*, as authorizes and empowers any justices of the peace or magistrates of cities and burghs to rate wages or fix prices of work for artificers, labourers, and craftsmen, shall be and the same is hereby repealed; and all orders heretofore made by any justice or justices of the peace or magistrates, in *England* or *Scotland* respectively, under the authority of the said recited acts, or any or either of them, for or in relation to the rating any wages, or settling or fixing any prices of work to be done or performed by any artificers, labourers, or craftsmen, or servants, shall be and the same are hereby declared to be void and of none effect.

Recited acts empowering magistrates to fix wages repealed; and all orders made by magistrates under such acts repealed.

§ IV. The Time of working for Labourers, and their Continuance to work.

[5 El. c. 4.]

5 El. c. 4.

By stat. 5 *El.* *c.* 4. § 12. All artificers and labourers, being hired for wages by the day or week, shall, betwixt the midst of *March* and midst of *September*, be and continue at their work from five in the morning till after seven at night (except in the time of breakfast, dinner, or drinking, which shall not exceed two hours and an half in a day, that is to say, at every drinking one half hour, for his dinner one hour, and for his sleep, when he is allowed to sleep, that is, from the midst of *May* to the midst of *August*, half an hour at the most, and at every breakfast one half hour); and all the artificers and labourers between the midst of *September* and the midst of *March* shall be and continue at their work from the spring of the day in the morning until night, except it be in the time before appointed for breakfast and dinner; on pain to forfeit 1*d.* for every hour's absence, to be deducted out of their wages.

No artificer or labourer shall depart before his work be finished.

And by § 13. Every artificer and labourer lawfully retained in building or repairing any church, house, ship, mill, or other piece of work taken in great, in task, or in gross, or who shall take upon him to make or finish any such thing or work, shall continue and not depart therefrom (unless for non-payment of the wages or hire agreed on, or appointed to serve the king, or other lawful cause, or without licence from the master or owner of the work, or of him that hath the charge thereof,) before the finishing thereof, on pain of imprisonment by one month, without bail, and forfeiture of 5*l.* to the party from whom he shall so depart, recoverable by

action of debt in any court of record ; besides such ordinary costs and damages as may be recovered by the common laws for any such offence.

§ V. Working in Harvest.

[5 El. c. 4. — 13 & 14 C. 2. c. 12.]

By stat. 5 *El. c.* 4. § 22. In the time of hay or corn harvest, the justices of the peace, and every of them, and also the constable or other head officer of every township, upon request, and for avoiding of the loss of any corn, grain, or hay, shall cause all such artificers and persons as be meet to labour, by the discretions of the said justices or constables, or other head officer, or by any of them, to serve by the day, for the mowing, reaping, shearing, getting, or inning of corn, grain, and hay, according to the skill and quality of the person ; and that none of the said persons shall refuse to do, on pain to suffer imprisonment in the stocks by the space of two days and one night ; and the constable of the town, or other head officer, on complaint to him made, shall set him in the stocks accordingly, on pain of 40*s*., half to the king, and half to him that shall sue in the sessions, or other court of record ; and if it is in a town corporate, then to the use of such town, as other fines by the charter. **Artificers, &c. to work in harvest.**

§ 23. Provides, that all persons of the counties where they have accustomed to go into other shires for harvest work, and having at that time no harvest work sufficient in the same town or county where they dwelt in the winter last past, bringing with them a testimonial under the hand and seal of one justice of the shire, or other head officer of the town or place they come from, testifying the same, for which he shall pay not above 1*d*. (other than such persons as shall be retained in service), may repair in harvest of hay or corn into any other county or place for the only mowing, reaping, and getting of hay, corn, or grain, and for the only working of harvest work, as they might have done before the making of this act. **Persons may go in harvest into other counties.**

By stat. 13 & 14 *C.* 2. *c.* 12. § 3. A person may go abroad to work in harvest, carrying with him a certificate from the minister and one churchwarden or overseer, that he hath a dwelling house or place in which he inhabits, and hath left wife and children, or some of them there (or otherwise as his condition shall require), and declaring him an inhabitant there. **13 & 14 C. 2. c. 12.**

§ VI. Testimonial.

[5 El. c. 4.]

By stat. 5 *El. c.* 4. § 10. None of the said persons retained in husbandry, or in any of the arts or sciences above remembered, after the time of his retainer expired, shall depart forth of one city, town, or parish, to another ; nor out of the lathe, rape, wapentake, or hundred ; nor out of the county where he last served, to serve in any other city, town corporate, lathe, rape, wapentake, hundred, or county ; unless he have a testimonial under the seal of the said city or town corporate, or of the constable or other **5 El. c. 4. Not to depart without a testimonial.**

5 El. c.4. head officer, and of two other honest householders of the city, town, or parish, where he last served. Which testimonial shall be in this form:

Form thereof. *Memorandum, that* A. B. *late servant to* C. D. *of* E. *husbandman, or taylor, &c. in the said county, is licensed to depart from his said master, and is at liberty to serve elsewhere according to the statute in that case made and provided. In witness whereof, &c. Dated the day, month, year, and place, &c. of the making thereof;*

Which testimonial shall be delivered to the said servant, and also registered by the minister of the parish where the master dwells, taking 2*d*. for the same.

Testimonial to be shown. And by § 11. No person that shall depart out of a service shall be retained or accepted into any other service, without showing (before his retainer) such testimonial to the chief officer of the town corporate, and in every other town and place, to the constable, curate, churchwarden, or other head officer; upon pain that every such servant so departing without such testimonial shall be imprisoned till he procure one; which if he cannot do in 21 days next after the first day of his imprisonment, he shall be whipped and used as a vagabond, according to the laws in such case provided; and every person retaining such servant, without showing such testimonial, shall forfeit 5*l*., half to the king, and half to him that shall sue in the sessions or other court of record; and if any such person be taken with a counterfeit testimonial, then to be whipped as a vagabond.

By the common law, if a man retained another man's servant, not knowing that he was retained with him, this ignorance excused him of the offence; but now the master may and must take notice whether such servant hath a testimonial or no, otherwise, if he hath no testimonial, such master is liable by the statute to the penalty of 5*l*. *D. & St.* 256.

§ VII. Servant fleeing into another Shire.

[5 El. c. 4.]

5 El. c.4. By stat. 5 *El. c.* 4. § 47. If any servant or apprentice of husbandry or of any art, science, or occupation aforesaid, flee into another shire, it shall be lawful for the justices of the peace, and the said mayors or other head officers being justices of the peace, to issue writs of *capias*, directed to the sheriffs of the counties or other head officers of the places whither he shall flee, to take his body, returnable before them at what time shall please them; so that if they come by such process, they be put in prison till they shall find sufficient surety well and honestly to serve their masters from whom they so fled.

§ VIII. Servant assaulting his Master.

[5 El. c. 4.]

5 El. c.4. By stat. 5 *El. c.* 4. § 21. If any servant, workman or labourer, shall wilfully or maliciously make an assault or affray upon his

master or mistress, or upon any other having charge or oversight of such servant or labourer, or over the work wherein he is appointed or hired to work, and shall thereof be convicted before any two justices, or other head officer as aforesaid, by confession or oath of two witnesses, he shall be imprisoned for a year or less, by the discretion of two justices out of a town corporate, and in a town corporate, of the mayor or other head officer with two others of the discreetest persons of the same corporation; and if the offence shall require further punishment, then to receive such other open punishment so as it extend not to life or limb, as the justices in sessions, or the mayor or other head officer, and six or four at least of the discreetest persons of the corporation, shall think convenient for the quality of the offence. 1 *Blac. Com.* 428.

§ IX. How far the Master is allowed to beat his Servant.

The master is allowed by law, with moderation, to chastise his servant being under age: but if the master or mistress beat any servant of full age, it may be a good cause of discharge, on complaint to the justices. *Dalt. c.* 58. *p.* 141. 1 *Blac. Com.* 428. *Vide* Vol. I. title Assault, &c. p. 228.

Where a master in correcting his servant happens to occasion his death, it shall be deemed homicide by misadventure; yet if in his correction he be so barbarous as to exceed all bounds of moderation, and thereby occasion the servant's death, it is manslaughter at least; and if he make use of an instrument improper for correction, and apparently endangering the servant's life, it is murder. 1 *Haw. c.* 29. § 5.

And if the servant shall depart out of his master's service, and the master happen after to lay hold of him, yet the master in this case may not beat or forcibly compel his said servant against his will to return or tarry with him, or do his service; but either he must complain to the justices, for his servant's departure, or he may have an action of covenant against his servant. *Dalt. c.* 121. *p.* 281. 282.

§ X. How far the Master may beat another in Defence of his Servant, or the Servant in Defence of his Master.

According to some opinions, a master shall not forfeit a recognisance of the peace for beating another in defence of his servant; nor the servant for beating another in defence of his master. 1 *Haw. c.* 60. § 24.

But in *Leeward* v. *Basilee*, 1 *Salk.* 407. 1 *Ld. Raym.* 62. *Bull. N. P.* 18. It was held by the court that a servant may justify an assault in defence of his master, but not a master in defence of his servant; because he might have an action for the loss of his service. *Vide* tit. Assault, &c. Vol. I. p. 228.

Tickel v. *Read*, *Lofft.* 215. In an action of assault and battery, the defendant pleaded a special plea in justification that he assisted his servant, whom the plaintiff was beating: It was con-

tended that the law will not justify a master interposing on an assault against his servant, by assaulting the person who beats the servant, as it doth a servant in like case interposing for his master; because it is the duty of the servant, who is hired to serve and be assistant to his master's person, but not so the master to the servant. On the other hand, it was contended that the duty of the master and servant is reciprocal; and if the servant owe to the master fidelity and obedience, the master owes to the servant protection and defence; and therefore that the defendant might well justify by this plea. Lord *Mansfield* C. J. I cannot say that a master interposing, when his servant is assaulted, is not justifiable, under the circumstances of the case, as well as a servant interposing for his master: it rests on the relation between master and servant.

§ XI. Servants firing Houses.

[Stat. 6 An. c. 31. — 14 G. 3. c. 78.]

6 An. c. 31. By stat. 6 *An. c.* 31. § 3. If any menial or other servant, through negligence or carelessness, shall fire or cause to be fired any dwelling-house or out-house, and be convicted thereof by oath of one witness before two justices, he shall forfeit 100*l.* to the churchwardens, to be distributed amongst the sufferers by such fire as to the said churchwardens shall seem fit; and if he shall not pay the same immediately on conviction, on demand by the churchwardens, he shall be committed by the said justices to some workhouse or house of correction, for 18 months, there to be kept to hard labour, *vide* Vol. I. title Burning.

14 G. 3. c. 78. By stat. 14 *G* 3. *c.* 78. § 84. The same offence is provided against in exactly the same words, and the same penalty is imposed, but the words "common gaol" are added to the words "workhouse or house of correction."

§ XII. Servant stealing his Master's Goods.

[Stat. 3 G. 4. c. 38.]

See title Larceny, Vol. III. from p. 215. to p. 226. where this subject is fully treated of.

3 G. 4. c. 38. Punishment of servants, &c. robbing their employers. By stat. 3 *G.* 4. *c.* 38. § 2. After reciting that whereas frequent depredations have of late been committed by *clerks, apprentices,* and *servants,* to the serious detriment and loss of their masters, mistresses, or employers; and it is expedient that such offenders, when entitled to benefit of clergy, should be made liable to a more severe punishment than can now by law be inflicted: it is therefore enacted, that "if any clerk, apprentice, or servant whatsoever, shall feloniously steal any goods, chattels, money, bond, bank note, cheque upon a banker or bankers, draft, promissory note for the payment of money, bill of exchange, or other valuable security or effects, from or belonging to, or in the possession, custody, or power of his, her, or their master or masters, mistress or mistresses, or employer or employers, and shall be lawfully convicted thereof, and be entitled to the benefit of clergy, then and in every such case, such offender or offenders, instead of being subjected to such punishment as may now by law be inflicted

upon persons so convicted, and entitled to the benefit of clergy, may, at the discretion of the court by or before which he, she, or they shall be convicted, be ordered and adjudged to be transported beyond the seas for any term not exceeding 14 years, or to be imprisoned only, or to be imprisoned or kept to hard labour, in the common gaol, house of correction, or penitentiary house, for any term not exceeding 3 years. **3 G.4. c.38.**

It is an indictable offence to incite and solicit a servant to steal his master's goods, though the servant do not steal the goods, and no other act be done, except the soliciting and inciting. *Rex* v. *Higgins*, 2 *East*, 5. *et vide* Vol. III. p. 37. **Soliciting servant to steal master's goods,**

And such offence is indictable at the quarter sessions as falling in with that class of offences, which, being violations of the law of the land, have a tendency, as it is said, to a breach of the peace, and are therefore cognisable by that jurisdiction. *S. C.* See stat. 3 *G.* 4. *c.* 38. § 3. *ante*, Vol. I. p. 9. **indictable offence.**

§ XIII. Disputes between Silk Masters and their Workmen.

[Stats. 13 & 14 C. 2. c. 15. — 20 C. 2. c. 6. — 8 & 9 W. c. 36. — 5 G. 4. c. 66. — c. 95.]

By stat. 13 & 14 *C.* 2. *c.* 15. § 6. Every silk winder and doubler, who shall unjustly or deceitfully and falsely purloin, embezzle, pawn, sell, or detain any part of silk delivered to them to wind or double, in every such case, as well the winder or journeyman so offending, as the buyer and receiver thereof, being lawfully convicted, by confession, or oath of one witness, before one justice of the county or liberty, (or if within any city or town corporate, before the mayor or chief officer), shall render to the party grieved such satisfaction for his damage and loss and charges, as the justice, &c. shall order. **13 & 14 C.2. c.15. Embezzling goods put out to work.**

§ 7. But no more damages shall be given than the party grieved shall prove he is damnified and hath expended in looking after the same; and if the party shall not be able, or do not make recompence in 14 days after conviction, in such manner and form as by the said justice, &c. shall be ordered and appointed, he shall for the first offence be apprehended and whipped, or set in the stocks where the offence was committed, or in some market town near in the said county; and for the second offence, to incur the like or such further punishment by whipping or being put in the stocks, as such justice, &c. shall think convenient. **Punishment if unable to make recompence.**

By stat. 20 *C.* 2. *c.* 6. § 3. If any silk winder or doubler shall be found faulty in unjustly, deceitfully, or falsely purloining, embezzling, pawning, selling, or detaining any silk committed to his trust, any justice, mayor, or chief officer of any county, liberty, or corporation, shall immediately on conviction, by confession, or oath of one witness, commit him to prison or to the house of correction till satisfaction be given to the party wronged, or punishment inflicted as by stat. 13 & 14 *C.* 2. *c.* 15. is appointed. **20 C.2. c.6. Silk winders or doublers to be committed,**

And by stat. 8 & 9 *W.* *c.* 36. § 6. Every person that shall embezzle, pawn, sell, or detain any silk delivered to him to be worked up, or after it is wrought up, and also the receiver, buyer, or such **8 & 9 W. c.36. Embezzling, or receiving embezzled goods.**

as take the same to pawn, shall be subject to all the penalties of stat. 13 & 14 *C.* 2. *c.* 15. and stat. 20 *C.* 2. *c.* 6.

5 G.4. c.66. repealing 13 G.3. c.68. 32 G.3. c.44. 51 G.3. c.7. for settling wages and prices for work of persons employed in silk manufacture.

Stat. 5 *G.* 4. *c.* 66. § 1. (*a*) after reciting stats. 13 *G.* 3. *c.* 68. — 32 *G.* 3. *c.* 44. — 51 *G.* 3. *c.* 7. And whereas the provisions of the said recited acts have not been found beneficial to the persons employed in the silk manufacture, but, on the contrary, the regulations and restrictions contained in the said acts have been found in their operation vexatious and injurious, and it is therefore expedient that the said acts should be wholly repealed: Enacts, that from and after the passing of this act viz. 17th *June* 1824, the said several recited acts, and every clause, provision, regulation, restriction, pain, penalty, forfeiture, matter, and thing, therein respectively contained shall be and the same is and are hereby severally and respectively repealed.

5 G.4. c.95. 13 G.3 c.68. repealing in part.

And again by stat. 5 *G.* 4. *c.* 95. § 1. so much of stat. 13 G. 3. *c.* 68. intituled "*An act to empower the magistrates therein mentioned to settle and regulate the wages of persons employed in the silk manufacture within their respective jurisdictions*" as relates to settling, regulating, ordering, and declaring the wages and prices of work, and the notification thereof, and makes it an offence to deviate from such settlement, regulation, order, and declaration, or to ask, receive, or take more or less wages, or larger or less prices, than shall be so settled, or to enter into combinations, or for that purpose to decoy or solicit, or to assemble as therein mentioned, and as relates to the detection of such offences, and as makes it an offence to retain or employ journeymen weavers, or to give, allow, or pay, or cause to be given, allowed, or paid, more or less wages than shall be settled as therein mentioned, (viz. § 1.—5.) shall be repealed, save and except in as far as the same may have repealed any prior act of parliament.

5 G.4 c.95. repealing 32 G.3. c.44. in part.

Again, the same stat. § 1. repeals so much of stat. 32 *G.* 3. *c.* 44. as extends the provisions of stat. 13 *G.* 3. *c.* 68.

§ XIV. Disputes between Clothiers and their Workmen.

[Stats. 7 J. 1. c.7. — 13 G. 1. c. 23. — 29 G. 2. c. 33. — 30 G. 2. c. 12. — 14 G. 3. c. 25. — 58 G. 3. c. 51.]

7 J.1. c.7.

By stat. 7 *J.* 1. *c.* 7. § 2, 3. Every person who shall unjustly, falsely, or deceitfully convey away, embezzle, purloin, sell, or detain any part of the wool or yarn delivered by any clothier, maker of bays, says, or by any other person making any such cloths or stuffs, to any such sorter, carder, kember, spinster, or weaver of wool or yarn, in such case, as well the sorter, &c. as the buyer and receiver thereof knowing the same, being thereof convicted by confession, or oath of one witness, before two justices, or if within a town corporate, before the mayor and one of the aldermen or most substantial persons of a town corporate, shall make such satisfaction for damages as the said justices or

(*a*) Intituled "An act to repeal certain acts of His late Majesty relating to the wages of persons employed in the manufacture of silk, and of silk mixed with other materials." Dated 17th *June*, 1824.

chief officers shall appoint; and if the offender shall not by them be thought sufficient, or do not make such satisfaction, he shal for the first offence be apprehended and whipped, or set in the stocks where the offence is committed, or in some market town near in the same county; and for the second offence shall incur the like or such further punishment by whipping, or being put in the stocks, as the said justices or chief officers shall think convenient. 7 J. 1. c. 7.

§ 4. And every spinner that shall receive any wool to be spun into yarn for any clothier dwelling in *Cogshall*, *Bocking*, *Braintree*, *Halsteed*, *Wiltom*, or *Colchester*, and shall deliver back the yarn by any reel shorter than two yards about, shall be subject to the like punishment.

13 G. 1. c. 23. Length and weight of goods delivered out to workmen.

By stat. 13 *G.* 1. *c.* 23. § 1. It is enacted, that it shall not be lawful for any maker of mixed medley, or white cloth, to use any bars called warping bars, but only such which shall be of the measure and length hereafter appointed; that is to say, every long warping bar shall be in length three yards and three inches, and no more; and every round warping bar shall be four yards and four inches round, and no more; the said three inches on the long bar, and four inches on the round bar, being in lieu of the over measure usually allowed on cloth; and also the thrums at the end of the warping bars shall not exceed 18 inches in length; and if any maker of such cloth shall use any warping bar of other length or measure, or with thrums exceeding 18 inches in length, he shall forfeit 10*l*.

§ 2. Every maker of such cloth, or goods mixed with wool, shall give out all wool, yarn, or other materials by weight at 16 ounces to the pound; and shall receive back the same by the same weight, on pain of 5*l*.

To be determined by two justices.

§ 4. Offences against this act shall be determined by two justices on information on oath within three calendar months; who shall levy the penalties by distress, half to the informer, and half to the poor; for want of sufficient distress, to be committed to gaol not exceeding three months, or until satisfaction be made.

And by § 5. All disputes and demands, relating to work, wages, or damages, between any clothier or maker of woollen goods or goods mixed with wool, and any weaver or other person employed in such manufactures, shall be determined by two justices, who shall on complaint summon the parties, and hear and examine on oath, and adjudge such satisfaction and give such costs and damages to the party grieved as they shall judge reasonable, and issue their warrant to levy such costs and damages (if not paid in ten days) by distress and sale; and for want of sufficient distress, shall commit the party to the county gaol or house of correction, not exceeding three months, or till satisfaction be made.

Appeal.

§ 6. Persons aggrieved by order of such justices may appeal to the next sessions, giving six days' notice in writing; and the sessions may award such costs and damages as they shall judge reasonable, and levy the same by distress and sale; and for want of sufficient distress, may commit the party to the county gaol or house of correction, for (not exceeding) three calendar months or till satisfaction be made; and no proceedings herein shall be removed by *certiorari* or other process.

§ 7. And one justice, on information on oath that any person is

13 G.1. c.23. or is suspected to be guilty of any of the ill practices aforesaid, may issue his warrant to the constable, or other peace officer, or to any churchwarden or overseer, directing him in the day time to enter into any house, shop, warehouse, or other suspected place, to search for and examine all such bars and weights, as shall be made use of for the purposes before mentioned, by any such clothier or maker of woollen goods; and if any clothier or maker of woollen cloth shall interrupt the officer, he shall forfeit *5l.*

And by § 9. Every maker of mixed, medley, or white broad cloth, shall pay the weaver according to the number of yards that the chains are laid on the warping bars, and not otherwise, on pain of *5l.*

29 G.2. c.33. Wages to be paid in money. (*a*)

By stat. 29 *G.* 2. *c.* 33. § 3. If any clothier, serge-maker, woollen or worsted stuff maker, worsted or woollen yarn stocking-master, or person concerned in making any woollen cloths, serges, stuffs, worsted or woollen yarn stockings, or any other person any way concerned for himself or another in employing weavers, combers of jersey or wool, worsted combers, spinners, knitters, or other labourers, in the woollen manufactures, shall pay any person his wages in goods, or by way of truck, bill or note (*a*), or in any other manner than in money; he shall (on prosecution in three months) forfeit *20l.* to be recovered by action of debt, by any person who shall sue for the same. — Or otherwise, before two justices, § 4. by confession or oath of one witness; to be levied by warrant of such justices by distress (if not paid in 14 days;) and to be distributed, § 5. half to the informer, and half to the poor (*b*): And for want of sufficient distress, to be committed to the house of correction for any time not exceeding three months, or until satisfaction shall be made. Persons aggrieved § 6, 7. by the order of the justices may appeal to the next sessions, first entering into recognisance with sufficient security before the justices to prosecute and abide by the order that shall be made on such appeal, and giving eight days' notice in writing to the party in whose favour the order was made. And the sessions may award costs and damages, and by their order or warrant may levy such costs and damages by distress and sale; and for want of sufficient distress, may commit the party to the common gaol for any time not exceeding three months, or until satisfaction shall be made. And the order of sessions shall be final; and no proceedings of the justices out of or in the sessions, shall be removed by *certiorari* or otherwise.

Form of conviction, (U).

Penalties how recovered.

30 G.2. c.12. By stat. 30 *G.* 2. *c.* 12. § 4. If any clothier or maker of any mixed, medley, or white broad cloth, shall refuse or neglect to pay to the weaver employed by him his wages or price agreed on, in money within two days next after the work shall be performed and delivered to such employer or some person on his behalf (the same being demanded of such employer or person employed on his behalf;) every such clothier or person so offending shall forfeit *40s.* to be recovered and disposed of as by the said act of the 29 *G.* 2. *c.* 33.

(*a*) But stat. 58 *G.*3. *c.*51. § 1. after reciting (inter alia) stat. 29 G.2. *c.*33. enacts "that wages of workmen of the descriptions mentioned in any of the aforesaid acts may be paid in bank notes if the parties consent. See this stat. *post*, § xxviii.

(*b*) See stat. 58 *G.*3. *c.*51. § 3. *post*, § xxviii.

And by stat. 14 *G.* 3. *c.* 25. § 1. If any picker, scribbler, spinner, or weaver, or other person employed in the manufacturing of woollen cloth, or in preparing materials for that purpose, shall not return all working tools or implements wherewith he shall be intrusted, and all wool, yarn, chain, woof, or abb, delivered out to be wrought, or shall not give a satisfactory account of the same to his employer when required; or shall fraudulently steam, damp, or water the wool or yarn delivered to him to be worked up; or shall take off, cut, or pick out the list, forrel, or other mark of any piece of cloth; he shall, on conviction before one justice where the offender shall reside, by confession or oath of one witness, be committed to the house of correction for one calendar month.

14 G. 3. c. 25. Working tools, &c. to be returned.

§ 2. If any such offender shall abscond, or cannot be found; or shall sell or otherwise dispose of any of the same, or any part thereof; or if any person shall fraudulently buy or receive any of the same; or if any person shall be charged on suspicion with having embezzled and kept back, by means of fraudulently damping, steaming, or watering the wool and yarn delivered out to him or with having sold, bought, or otherwise received the same,— and oath shall be made thereof before one justice where the offence was committed; such justice shall issue his warrant to the constable, to enter into and search in the day-time the place of dwelling or residence of such person, and also such other house or place, of which the clothier or his servant shall make oath that he has just cause to suspect (it appearing to the said justice to be reasonable suspicion) that the said working tools or materials, or some part thereof, may be secreted and lodged; and if, upon search, any of the said working tools, wool, yarn, chain, woof, or abb, or any cloth, with the list, forrel, or other mark taken off, cut, or picked out, shall be found, the constable or peace-officer shall seize the same, and apprehend the person in whose custody or possession they shall be found, and bring him before the same or some other justice; and unless he can give a good account how he came by the same to the satisfaction of such justice, he shall be thereof convicted, and suffer the like punishment as for not returning the tools or materials as aforesaid. And all such tools &c. so seized and not accounted for, shall, upon such conviction, be delivered over to the churchwardens or overseers of the poor of the parish where the same were seized, to be by them sold for the use of the poor of the said parish.

Absconding and selling materials; or fraudulently buying, &c. tools.

§ 3. Provided, that if the person accused shall request of the justice to appoint a reasonable time to produce the person of whom he bought or received the same, or any witness to prove the sale or delivery thereof; the said justice shall appoint such time as aforesaid, and shall issue a summons to the constable or other peace officer where such person or witness shall reside, requiring them to appear before such justice at such time and place as the justice shall appoint, in order to be examined on oath of the several matters aforesaid; but such person, at the time of making the said request, shall enter into recognisance with or without surety as the justice shall think proper for his appearance at the time so to be set; or for want of such recognisance, he shall be committed until the said time.

Justices to allow a reasonable time for producing parties.

14 G.3. c.25. Concealing ends of yarn, &c.

And by § 4. Upon information on oath made to any justice that there is just cause to suspect that any ends of yarn, wefts, thrums, short yarn, or other refuse of cloth, drugget, or of other woollen goods, or of goods mixed with wool (flocks and pinions only excepted), have been collected and received, and are lodged or concealed in any dwelling-house, warehouse, out-house, yard, or other place, such justice shall by his warrant cause every such place to be searched in the day-time; and if any of the said goods or materials (flocks and pinions only excepted), above the quantity of three pounds, shall be found therein, to seize the same, and he shall cause the person in whose house or other place the same shall be found, to be brought before him or some other justice: and on proof made upon oath before such justice that such goods or materials were found in the house or other place of such person so brought before him; the said person not exculpating himself to the satisfaction of such justice, shall suffer the like punishment as for not returning the tools or materials as aforesaid.

Conviction.

And by § 8. the conviction shall be in the manner and form following:

BE it remembered, that on the ——— day of ———, in the year of our Lord ———, A. B. is convicted before me (us) ——— ——— of his majesty's justices of the peace in and for the county, division, liberty, or place [as the case may be] *of having* [here specify the offence and the time and place when and where the same was committed.] *Given under my hand and seal* [or, *our hands and seals*, as the case may be] *the day and year aforesaid.*

§ 9. And the justice shall cause the same to be written on parchment, and filed at the next sessions.

Appeal.

§ 7. If any person think himself aggrieved by the judgment of the justices convicting him, he may appeal; and the justice, at the time of the conviction, shall make known to such person that he hath a right to appeal to the next sessions. And if such person intends to appeal, he shall, at the time of the conviction, give notice thereof in writing to the justice, and at the same time enter into recognisance with sureties conditioned to try the appeal and to abide the judgment of, and pay such costs as shall be awarded by the justices at such sessions. And the justices there, upon proof of such notice and recognisance, shall hear and determine the matter, and may award costs to either party: and if the judgment be affirmed, then the appellant shall suffer as for not returning tools.

Proceedings against offenders on second offence.

But by § 5, 6. If upon information on oath before a justice, it shall appear to him that the person informed against hath been already convicted of any offence against this act, such justice shall not proceed to convict him, but shall commit him to the house of correction till the next sessions, or until he shall have entered into recognisance with sufficient sureties to appear at such sessions, and abide the order of the justices there: and the justices shall also bind over the informer to prosecute at such sessions. And if the person informed against shall be found guilty, the justices there shall commit him to the house of correction for

(not exceeding) three calendar months. But if it appear to the said justices that such person hath been already convicted at some sessions of any offence against this act; then they shall, upon a like conviction, commit him to the house of correction for (not exceeding) six calendar months, and also order him to be once publicly whipped at such time and place as they shall appoint. 14 G. 3. c. 25.

§ 10. Provided always, that no person shall be proceeded against upon this act, unless information upon oath be made before a justice within three calendar months after the offence committed. Information to be upon oath.

§ 10. Finally, no proceedings on this act shall be quashed for want of form, or removed by *certiorari* or other writ. Certiorari.

§ XV. Disputes between Masters and Servants in the Woollen, Linen, Fustian, Cotton, and Iron Manufactures, and see further § XVII.

[Stats. 1 An. st. 2. c. 18. — 13 G. 2. c. 8. — 58 G. 3. c. 51.]

By stat. 1 *Ann. st.* 2. *c.* 18. § 1. If any person employed in the working up the woollen, linen, fustian, cotton, or iron manufactures shall embezzle or purloin any wefts, thrums, or ends of yarn, or any other materials of wool, hemp, flax, cotton, or iron, or shall reel short or false yarn, (*as to reeling false or short yarn, see* 14 *G.* 3. *c.* 44. *post.* § XVII.) and shall be convicted by oath of one witness, or confession, before one justice, he shall forfeit double the value of the damages for the use of the poor of the parish: and if he shall neglect or refuse to pay the same on conviction, the justice shall commit him to the house of correction until satisfaction shall be made: and if it shall appear to the justice that he is not able to make satisfaction, he shall be there publicly whipped, and kept to hard labour not exceeding 14 days. 1 An. st. 2. c. 18. Embezzling goods put out to work. Reeling false or short yarn.

And by § 2. Every person buying or receiving any wefts, thrums, or ends of yarn, or other materials of wool, hemp, flax, cotton, or iron, shall, on conviction in like manner, suffer in like manner.

And by § 3. All payments to the said workmen, shall be by money (*a*) and not by cloth, victuals, or commodities; and all wool delivered out to be wrought up shall be delivered with declaration of the true weight thereof; on pain that every offender in either of the said cases shall forfeit double the value of what shall be due for such work: and if any such workman shall be guilty of any such fraud or default in the work by him done, he shall answer double damages. Workmen to be paid in money.

And by § 4. All wages, demands, frauds, and defaults of labourers, in the said manufactures, concerning work done therein, shall be determined by two justices, who may summon and examine witnesses on oath: persons aggrieved may appeal to the sessions to be holden next after notice of the order of the said two justices: and if the sessions give judgment against the ap- Power of the justices. Appeal.

(*a*) But see stat. 58 *G.* 3. *c.* 51. § xxviii.

pellant, they shall order him to pay such costs as to them shall seem meet.

13 G. 2. c. 8. Embezzling, &c.

And by stat. 13 *G.* 2. *c.* 8. § 1. If any person hired or employed in the working up of any woollen, linen, fustian, cotton, or iron manufactures, shall purloin, embezzle, secrete, sell, pawn, exchange, or otherwise illegally dispose of any of the materials with which he shall be entrusted to work up the same, whether the same or any part thereof be or be not first wrought up, or shall reel short or false yarn (*see stat.* 14 *G.* 3. *c.* 44. *post.* § xvii.) and shall be convicted thereof as by stat. 1 *Ann. st.* 2. *c.* 18., he shall forfeit double value of the damages, together with such costs as the justice who convicts shall judge reasonable; and if not paid immediately, the said justice shall cause him to be committed to the house of correction, to be there whipped and kept to hard labour, not exceeding 14 days; and for a second or other subsequent offence for such embezzling or purloining, he shall forfeit four times the value of the damages, together with such costs as the justice shall judge reasonable; and if not paid immediately, then such or any other justice of the county, &c. shall cause him to be committed to the house of correction, to be there kept to hard labour for any time not exceeding three months, nor less than one month, and also during the time of such commitment shall cause him to be publicly whipped in the market-town where he shall be committed, at the market-place or cross, once or oftener, as to such justices shall seem reasonable.

Reeling false or short yarn.

Second offence.

And by § 2. The buyers or receivers of the same shall be subject to the like penalties.

58 G. 3. c. 51. Application of forfeitures.

By stat. 58 *G.* 3. *c.* 51. § 3. If any person shall be convicted in any penalty under the said acts [viz. 1 *Ann. st.* 2. *c.* 18. or 13 *G.* 2. *c.* 8.] such penalty, instead of being applied as by the said acts is directed, shall be paid and applied, one moiety thereof to the informer, and the other moiety to the churchwardens and overseers of the poor, or in *Scotland* to the kirk session of the parish within which the said offence shall have been committed, for the use of the poor of the said parish.

§ XVI. Disputes between Masters and their Workmen, in the Leathern Manufactures.

[Stats. 13 G. 2. c. 8. — 58 G. 3. c. 51.]

13 G. 2. c. 8. Embezzling goods put out to work.

By stat. 13 *G.* 2. *c.* 8. § 4. If any person hired or employed in cutting, paring, washing, dressing, sewing, making up, or otherwise manufacturing of gloves, breeches, leather, skins, boots, shoes, slippers, wares, or other goods or materials to be made use of in any of the said employments, or in any branch or particular thereof, shall fraudulently purloin, embezzle, secrete, sell, pawn, or exchange all or any part of the gloves, breeches, leather, skins, parings, or shreds of gloves or leather or other materials with which he shall be entrusted to work up or manufacture, or any boots, shoes, slippers, or wares when made, wrought up, or manufactured, or do or wilfully permit any other act whereby to lessen the value of such or any part of such gloves, &c. &c. either before or after they shall be so made into wares, and be thereof

convicted by the oath or affirmation of the master or owner, or other credible witness, or confession, before one justice where the offence shall be committed or the offender shall reside; such justice may award him to make suitable satisfaction to the party injured, not exceeding double the value of the goods so purloined, &c. half to the party grieved and half to the poor, together with full charges attending the conviction; to be levied by distress and sale, rendering the overplus upon demand to the owner; and if he shall not have goods sufficient and shall not pay immediately, such justice shall commit him to the house of correction or other public prison, to be kept to hard labour for 14 days and there whipped, in such manner as the justice shall direct; and on a subsequent conviction for a second or other such like offence, he shall forfeit four times the value of the damages, together with such costs of prosecution as the justice shall judge reasonable; and if not paid immediately, to be committed to the house of correction or other public prison, to be there kept to hard labour not exceeding three months, nor less than one month, and also during such commitment to be publicly whipped in the market-town where he shall be committed at the market-place or cross, once or oftener, as to such justice shall seem reasonable.

13 G.2. c.8.

Second offence.

§ 5. Every person who shall knowingly or willingly buy or receive any the said goods or materials either from the person offending or from any other person (except the owner), or offer so to do; shall, on like conviction, make such recompence in two days next after the fact shall be determined by any justice as aforesaid, or else be subject to such distress, and for want of sufficient distress be liable to the like punishment as the person so purloining or otherwise disposing thereof as above; and so in like manner for the second and every other subsequent offence.

Buying or receiving embezzled goods.

And by § 6. All payments to workmen employed in the making or manufacturing of gloves, breeches, boots, shoes, slippers, wares or goods of that sort before mentioned, shall be in money (*a*); and not by victuals or goods, except by their own request and consent; and all materials delivered out to be wrought in the manufacture last mentioned, shall be delivered with a declaration of the true weight, quantity, or tale thereof, on pain of forfeiting to such manufacturer double the value of what shall be due for his work; and if such labourer, manufacturer, or worker shall be guilty of any fraud, abuse, neglect or default in the work by him undertaken to be done, he shall answer to the owner double damages.

Workmen to be paid in money.

§ 7. And all wages, demands, frauds, abuses, neglects, and defaults of labourers, manufacturers, and workmen in the trades last above-mentioned, concerning any work done in that manufacture, shall be determined by two justices, who may summon and examine witnesses upon oath or affirmation.

Power of justices.

Moreover, by § 8. Every person retained or employed in making up any gloves, breeches, boots, shoes, slippers, or other wares as aforesaid for any one master, and neglecting the performance thereof, either by procuring or permitting himself to

Work to be finished.

(*a*) But see stat. 58 G.3. c.51. *post*, § xxviii.

13 G.2. c.8. be subsequently retained or employed by any other master before he hath completed the work in or to do which he was first employed, and shall be first delivered to him, he shall, on conviction by oath of one witness before one justice, be sent to the house of correction, there to be kept to hard labour not exceeding one month.

Appeal. § 9. Persons aggrieved by any order of the said two justices may appeal to the next sessions, giving eight days' notice to the person against whom the appeal shall be brought; and the sessions may summon witnesses and finally determine the matter of appeal and award costs to either party. But no order of such two justices shall be appealed against, or quashed, for want of form only.

§ XVII. Disputes between Masters and their Workmen, in the making of Hats, or in the Woollen, Linen, Fustian, Cotton, Iron, Leather, Fur, Hemp, Flax, Mohair, or Silk Manufactures.

[Stats. 12 G. 1. c. 34.—13 G. 1. c. 23. —22 G. 2. c. 27.—14 G. 3. c. 44. — 15 G. 3. c. 14. — 17 G. 3. c. 11. — c. 55. — c. 56. — 22 G. 3. c. 40.—58 G. 3. c. 51.—4 G. 4. c. 46.—5 G. 4. c. 96.]

13 G. 1. c. 23. By stat. 13 G. 1. *c.* 23. "for the better regulation of the woollen manufacture, and for preventing disputes among the persons concerned therein; and for limiting a time for prosecuting for the forfeiture appointed by an act of the 12th year of H. M.'s reign, in case of payment of the workman's wages in any other manner than in money."

How disputes relating to wages or damages shall be heard. § 5. It is enacted, that all disputes and demands relating to work, wages, or damages between any clothier or maker of woollen goods, or goods mixed with wool, and any weaver or other person or persons employed in such manufactures, shall be heard and determined by two or more justices of the peace for the county, division, or place where such dispute or demand shall arise, who are hereby required and authorised, upon complaint to them made, to summon the parties, and to hear and examine upon oath, and adjudge such satisfaction, and to give such costs and damages to the party aggrieved, as in their discretion shall seem reasonable, and to issue their warrant or warrants to levy such costs and damages by distress and sale of the goods and chattels of such person or persons, who shall refuse for the space of ten days, to pay such costs and damages by them so adjudged; and for want of a sufficient distress, to commit the party to the county gaol or house of correction, for any time not exceeding the space of three months, or until satisfaction shall be made by the party so offending.

In *R.* v. *Heywood and another, K. B. T.* 1813, 1 *M. & S.* 624. it was determined that this § 5. of stat. 13 *G.* 1. *c.* 23. for settling "disputes between clothiers or makers of woollen goods, and weavers, or persons employed in such manufactures," does not relate to *demands* against clothiers by the owner of a scribbling and carding-mill, for work done by him for the clothiers, in teasing, scribbling, carding, and stubbing the wool at his mill: therefore

the court refused a *mandamus* to two justices to hear and examine such demands. Lord *Ellenborough* C. J. said, "the penal provisions of this statute show that it is not applicable to the adjustment of debts between parties of equal rank in trade. 'Wages,' is the emphatical word denominating the character of the person who is authorised to apply, and all the words seem to express the relation between master and servant." This view of the statute is confirmed by reference to other statutes on the same subject, especially stat. 14 *G.* 3. *c.* 25. ante § XIV. 13 G. 1. c. 23.

Stat. 13 *G.* 1. *c.* 23. § 6. Provides, that it shall be lawful for any person aggrieved by any order of such justices, to appeal to the justices of peace at the next general quarter sessions to be holden for the county, division, or place where such order shall be made, giving six days' notice in writing of such appeal; and the justices in their quarter sessions are hereby authorised and required to hear and determine the matter of such appeal; and make such order, and to award such costs and damages as to them in their discretion shall seem reasonable, and to levy, by their order or warrants, such costs and damages so awarded, by distress and sale of the goods and chattels of any person or persons who shall refuse to obey the same; and for want of sufficient distress, to commit the party to the county gaol or house of correction, for any time not exceeding three calendar months, or until satisfaction shall be made by the parties offending; and such award or order of the justices at the quarter sessions shall be final, nor shall the proceedings of any justice or justices out of sessions, or of the justices in their sessions, in pursuance of this act, be liable to be removed by *certiorari* or other form or process of law.

Appeal to the quarter sessions, &c.

By stats. 22 *G.* 2. *c.* 27. § 1. & 17 *G.* 3. c. 56. § 1, 2. If any person hired or employed to make any felt or hat, or to prepare or work up any woollen, linen, fustian, cotton, iron, leather, fur, hemp, flax, mohair, or silk manufactures, or any manufactures made up of wool, fur, hemp, flax, cotton, mohair, or silk, or of any of the said materials mixed one with another, shall purloin, embezzle, secrete, sell, pawn, exchange or otherwise unlawfully dispose of any of the materials with which he shall be entrusted, whether the same be or be not first wrought up, and be convicted thereof by the oath or affirmation of the owner, or other credible witness, or confession before two justices, he shall for the first offence be committed to the house of correction or other public prison, there to be kept to hard labour for not less than 14 days, nor more than three months; and for a second or any other subsequent offence of the same kind, not less than three months nor more than six months; and the justices may likewise, for the first or any subsequent offence, order the offender to be once publicly whipped, if such additional punishment shall by them be deemed proper. 2 *East's P. C.* 584.

22 G. 2. c. 27. 17 G. 3. c. 56. Embezzling, &c. goods put out to work.

Second offence.

And by stat. 22 *G.* 2. *c.* 27. § 2. and 17 *G.* 3. *c.* 56. § 3, 4. If any person shall be convicted as aforesaid of buying, receiving, or taking, by way of gift, pawn, pledge, sale, or exchange, or in any other manner, from any person whom he knows to be hired or employed to make or prepare or work up any the said manufactures or any of the said materials mixed one with another, any thrums or ends of yarn, or any other materials of wool, fur,

Buying or receiving materials from workmen.

22 G.2. c.27. 17 G.3. c.56. hemp, flax, cotton, or iron, or any leather, mohair, or silk, whether the same be or be not first wrought, made up, or manufactured, the consent of the hirer or employer not being first had; or of buying or receiving in any manner whatsoever from any other person any of the said materials, whether the same be or be not first wrought, &c. knowing the same to be so purloined or embezzled, he shall, for the first offence, forfeit not more than

Penalty. 40*l.* nor less than 20*l.*: the same to be applied, by direction of the justices, in the first place to defray the expences of the prosecution; next, to make such satisfaction to the party injured as the justices shall think proper; afterwards to the informer, a sum not exceeding 10*l.*; and the remainder, if any, to the poor of the place where the conviction shall be, or to such other public charity as the justices shall appoint; and if the said penalty shall not be paid on conviction, the justices shall commit the offender to the house of correction or other public prison, there to be kept to hard labour for any time not more than six months, nor less than three months, unless the penalty shall be sooner paid: or the justices may send him to the house of correction or other public prison for three days exclusive of the day of commitment, with an order that within the said time the offender shall be once publicly whipped at the market-place or some other

Second offence. public place where the offender shall be committed. For a second offence, if a person brought before the justices shall be charged therewith upon oath or solemn affirmation, they shall not preceed to convict him, but shall commit him to the house of correction or other public prison till the next general, or general quarter sessions, or till he shall have entered into recognisance to answer for such offence at the said sessions; and the justices there shall hear and determine the matter; and if the person shall be convicted, he shall forfeit not more than 100*l.* nor less than 50*l.* to be recovered and distributed under direction of the justices in like manner as the penalty for the first offence; and if not paid on conviction, the justices shall commit him to the house of correction or public prison, there to be kept to hard labour, not more than six, or less than three months unless the penalty shall be sooner paid; or they may send him to the house of correction or other public prison for three days, exclusive of the day of commitment, with an order, that within that time he shall be once publicly whipped as aforesaid.

Selling the same. And by stat. 17 *G.* 3. *c.* 56. § 5. If any person shall sell, pawn, pledge, exchange, or otherwise unlawfully dispose of any such materials, knowing them to have been purloined or embezzled, he shall suffer like punishment as for receiving the same.

How justices to proceed on charge on oath of suspected persons. And by § 6. Although the purloined materials be worked up, or otherwise disposed of, so that it may be difficult to convict the offender, two justices as aforesaid, or the justices in sessions respectively, on proof on oath of one witness, that such person hath purloined or embezzled or received such materials knowing them to be purloined or embezzled, or received from some person not entitled to dispose thereof, may convict the offender, although no proof shall be given to whom such materials belong.

Provisions extended to tools and implements. § 16. All which provisions in respect of materials shall extend to all tools and implements with which any person shall be entrusted for manufacturing the said materials; and also to all drugs

and ingredients wherewith any person shall be entrusted for dyeing, preparing, or manufacturing the same.

By stats. 12 *G.* 1. *c.* 34. § 2. and 22 *G.* 2. *c.* 27. § 12. If any person shall wilfully damnify, spoil, or destroy, without consent of the owner, any work committed to his charge, he shall on conviction as aforesaid, forfeit to the owner double value, to be levied by distress by warrant of two justices; for want of sufficient distress, the offender shall be committed to the house of correction, there to be kept to hard labour for any time not exceeding three months, or till satisfaction be made to the party aggrieved for the same. 12 G. 1. c. 34. 22 G. 2. c. 27. Spoiling work wilfully;

By stat. 17 *G.* 3. *c.* 56. § 8, 9. If any person hired, retained, or employed to work up materials for any master, shall wilfully neglect the performance thereof for eight days successively; or having taken in any materials for manufacture from one master shall afterwards take in any for manufacture from another master; or suffer himself to be employed or retained in any other occupation sooner than eight days before the completion of the work first taken; he shall, on conviction on the oath of one witness, be sent in like manner to the house of correction or other public prison, there to be kept to hard labour, not exceeding three months, nor less than one: and if any person shall receive any of the said materials in a fictitious name in order to be manufactured, or shall receive the same in his own name, to be manufactured by himself, and afterwards deliver them or any part thereof to any other person to be manufactured without the owner's consent; or if any carrier, or other person employed to deliver such materials, shall deliver the same to any other person than him to whom the owner ordered or intended them to be delivered; he shall suffer, as in case of neglecting the performance of the work for eight days. 17 G. 3. c. 56. or neglecting to perform work in due time: otherwise occupied: punishment: receiving materials in false name, &c. carrier delivering materials to wrong consignee.

And by § 15. It shall be lawful for the owner of the materials to enter at all seasonable hours in the day-time into the shop or out-house of any person employed by him to work up any the said materials, or other place where the work shall be carried on, and there to inspect the condition thereof; and if any person shall refuse to permit such entrance or inspection, he shall forfeit any sum at the discretion of the justices before whom he shall be convicted, not exceeding 40*s.* nor less than 10*s.*, to be recovered and applied as for having materials without being able to give a satisfactory account how he came by them. Owner of materials may enter shops, &c. of workmen.

§ 7. If any person entrusted with any of the said materials, in order to work up the same, shall neglect, for the space of eight days after the work shall be finished, to return (if required by the owner) so much of the said materials as were not used, he shall suffer as for purloining or embezzling. Materials not used to be returned.

And § 10. Two justices, on complaint upon oath (or solemn affirmation) that there is cause to suspect that any such purloined or embezzled materials, whether mixed or unmixed, wrought or unwrought, are concealed in any dwelling house, out-house, yard, garden, or other place, may by their warrant cause the same to be searched in the day-time: and if any such suspected materials shall be found therein, they may cause the same, and the person in whose house, out-house, yard, garden, or other place, they shall be found, to be brought before any two justices of the Power of the justices.

17 G.3. c.56.

county, &c.; and if such person shall not give an account to the satisfaction of such justices how he came by the same, the said person shall be adjudged guilty of a misdemeanor, and shall be punished in manner hereinafter mentioned, although no proof shall be given to whom such materials belong: and § 11. every peace officer, and beadle within his ward, parish, or district, and every watchman during the time he is upon duty, may apprehend any person who may reasonably be suspected of carrying or conveying after sun-setting and before sun-rising any such materials, and the same together with such person may carry before two justices of the county, &c.; and if the person shall not produce the party duly entitled to dispose thereof of whom he bought or received the same, or some person to testify upon oath (or affirmation) the sale or delivery thereof, or shall not give a satisfactory account how he came by the same, the said person shall be adjudged guilty of a misdemeanor, and punished in manner hereinafter mentioned, although no proof shall be given to whom such materials belong. — Provided, § 12, that in either of these two cases if the person who shall be brought before the two justices shall request them to appoint a reasonable time to produce the person duly entitled to sell or dispose of the same, or from whom he bought or received the same, or a witness to prove the sale or delivery thereof, the justices may appoint such time, and issue a summons to the constable where such person or witness shall reside, requiring him to appear in order to be examined and give evidence: but such person, at the time of his request, shall enter into recognisance with or without surety as the justices shall please, for his appearance at the time; or, for want of such recognisance, shall be committed until such time appointed.

Peace officers may apprehend suspected persons.

Justices may appoint time to produce persons entitled to dispose of materials, &c.

§ 13. When a person shall be convicted of a misdemeanor in either of the two cases aforegoing, the justices may cause the materials so found or seized to be deposited with the churchwardens or overseers, or in any other convenient place for any time not exceeding 30 days; and in the mean time shall order the churchwardens and overseers or one of them to advertise the same in some newspaper usually circulated there, or otherwise to cause notice to be given by some public cryer, and by fixing such notice on the church or chapel door, that those who have lost such materials, or any reputable person on their behalf, may come and claim the same; and if any person can prove them to be his, the justices shall order them to be restored to the owner, he paying the charges of removing, depositing, and giving notice. But if before the end of 30 days no person shall come and prove his property, the justices shall order the same to be sold, and after deducting such charges as aforesaid together with the charges of sale, one moiety of the money arising from such sale shall be given to the person apprehending or prosecuting, and the other moiety either to the poor where the conviction shall be, or to such public charity as the justices convicting shall appoint: and by § 14. the offender shall forfeit for the first offence 20*l.*, for the second offence 30*l.*, and for every subsequent offence 40*l.* All which said respective forfeitures shall be levied by distress, and distributed half to the informer and half to the poor where the conviction shall be, or to such public charity as the justices convicting shall appoint: if no sufficient distress shall be found, the said justices shall commit the offender to the common goal or other prison, or

Penalty.

Distress.

house of correction, for one month for the first offence, for two months for the second offence, and for six months for every subsequent offence. 17 G. 3. c. 56.

§ 17. If any person hired, retained, or employed as a journeyman dyer, servant, or apprentice, in the dyeing of any felt, or hat, or any woollen, linen, fustian, cotton, leather, fur, flax, mohair, or silk materials, shall, without consent of the master or person hiring, &c. dye any of the same, whether wrought or unwrought; or without consent shall wilfully receive any such for the purpose of dyeing the same, whether dyed or prepared for dyeing, or shall offer any such materials to any such journeyman, &c. for such purpose, he shall, on conviction on the oath of one witness before two justices, for the first offence forfeit 10*s*., for the second offence 20*s*., and for every subsequent offence 40*s*.: or if any person shall procure any such materials to be dyed by any person so hired, &c. as such journeyman, &c. without consent of the master or employer, he shall forfeit for the first offence 5*s*., for the second offence 20*s*., and for every subsequent offence 4*l*.; to be recovered as aforesaid before two justices, on the oath of one witness, to the use of the informer, and in case of non-payment on conviction, the offender to be committed to the common gaol or house of correction for any time not exceeding one month. **Servant dyeing goods for his own profit.**

By stat. 12 *G*. 1. *c*. 34. § 6. If any person shall assault or abuse any master or other person concerned in any of the said manufactures, whereby he shall receive any bodily hurt, for not complying with any such illegal bye-laws, &c., or shall write or cause to be written, or knowingly send or cause to be sent, any letter or other writing, or message threatening any harm to any such person, or threatening to burn, pull down, or destroy any of his houses or outhouses, or cut down or destroy any of his trees, or to maim or kill any of his cattle, for not complying with any demands of his workmen, or for not conforming to any such illegal bye-laws, &c., he shall, on conviction by indictment to be found in twelve calendar months, be guilty of felony, and transported for seven years. 12 G. 1. c. 34. **Assaulting or threatening masters, &c.**

By stat. 12 *G*. 1. *c*. 34. § 4. The master shall pay his workmen in money and not otherwise (*a*), and shall not make any deduction on account of any goods sold or delivered previous to the agreement; and for the more easy recovering the said wages, two justices upon complaint (in three months, by stat. 13 *G*. 1. *c*. 23. § 17.) shall summon the party offending, and for non-payment shall issue their warrant to levy the same by distress; and for want of sufficient distress, shall commit the offender to gaol for six months, or until he shall pay or give full satisfaction for the same to the good liking of the party grieved. And every person paying the same otherwise than in money shall forfeit 10*l*., half to the informer, and half to the party grieved (*a*), by distress as aforesaid. 12 G. 1. c. 34. **Wages to be paid in money.**

By stat. 17 *G*. 3. *c*. 55. § 3. If any journeyman hatter, hatmaker, piece-master, servant, workman, or other person employed 17 G. 3. c. 55. **Journeyman**

(*a*) But see stat. 58 G. 3. c. 51. § 3. —*post*, § xxviii.

17 G.3. c.55.

hatter, &c. convicted of departing from service before hiring expired, or of not finishing work, &c. to enter into recognizance before appeal.

in making or finishing hats or felts, shall be convicted in manner prescribed by stat. 22 *G.* 2. *c.* 27., of departing from his service before his time of hiring is expired, or of quitting or returning his work before the same is finished according to agreement, or of wilfully spoiling or destroying any goods or work, such person so convicted, before he is entitled to appeal to the quarter sessions, or before the proceedings under any such conviction are suspended, shall enter into recognisance with two sureties in 5*l.* each, before a justice for the county, city, or place, where the offence was committed, for the appearance of the party convicted at such sessions, to prosecute such appeal, and abide the judgment of such sessions, and the justices there shall finally determine such appeal, and award costs to either party; and if, on hearing such appeal, the judgment appealed against is confirmed, the appellant shall immediately be committed to the common gaol, in pursuance of the original order of conviction, for the time ordered by such order, and until he shall pay the costs awarded by such sessions.

No master hatter, &c. to act as justice.

By § 6. No person exercising the trade of a master hatter, hatmaker, or felt-maker, shall, during the continuance of his trading, be capable of acting as a justice of peace in the execution of any act relative to the punishment of any journeyman hat-maker or apprentice offending against the same.

Appeal.

§ 8. Persons convicted before one justice of any offence against this act may appeal to the next general or quarter sessions to be held for the county, city, or place, giving immediate notice of the intention to bring such appeal, and finding security to the satisfaction of the convicting justice, for being present at such sessions, and for prosecuting such appeal with effect, and abiding the judgment of the court; and the justices in such sessions shall finally determine the matter, and award reasonable costs to either party; and if such conviction is affirmed, such appellant shall be committed to the common gaol or house of correction, for not exceeding three months.

Limitation of actions against justices, &c.

By § 9. No action for any thing done under this act shall be brought against any justice, constable, or other officer, or any other person, unless the same is commenced within three calendar months next after the doing of such matter.

General issue.

Double costs.

By § 10. Persons sued for any thing done under this act may plead the general issue, and this act, and special matter, in evidence; and if the plaintiff is nonsuited, discontinues, or forbears prosecution, or has judgment against him on demurrer, the defendant shall have double costs, with the usual remedy to recover the same.

17 G.3. c.56. Recovering penalties.

By stat. 17 *G.* 3. *c.* 56. § 19. In order to recover the penalties on these acts, one justice, on complaint to him on oath, may issue his warrant for apprehending the person accused, and bringing him before two justices; who shall proceed to hear and determine the offence. And by § 18. any inhabitant of the parish, township, or place, where the offence shall be committed, shall be deemed a competent witness, notwithstanding his being an inhabitant there.

§ 21. The conviction shall be written on parchment in this or the like form. 17 G.3. c.56. **Conviction.**

Middlesex (*or any other place, as the case shall be*,) to wit. } *BE it remembered, that on the* ——— *day of* ———, *in the year of our Lord* ———. A. B. *was convicted before us* ———, *of his majesty's justices of the peace in and for the said county of* ———, or, *for the riding of the said county of* ———, or, *for the city, liberty, town, or place, aforesaid, in the said county* ——— (as the case shall be) *of* ———. [Here specify the offence, and when and where the same was committed.] *Given under our hands and seals, the day and year first above written.*

Mr. Evans is of opinion, that it will not be sufficient merely to follow this form of conviction, there being a discretionary punishment as to some of the offences included in this act. *See* 8 *Ev, Col. Stat.* Part VI. Class XXXI. p. 217. (I).

Mr. Evans observes, where there is a discretion as to to the duration of imprisonment to be suffered for want of distress, as in cases depending upon § 4., the general practice of the sessions has been to require such imprisonment to appear on the face of the conviction, and it seems to be necessary that it should so appear. Upon a conviction under that section, it may be proper, after stating the offence, to proceed as follows:—"And we do adjudge, that for the said offence, being his first offence, the said *John Smith* hath forfeited the sum of 40*l*., which we direct shall be applied as follows; that is to say, that, in the first place, the sum of 5*l*. being the expence of the prosecution, shall be paid to *A. B.*; that in the next place, the sum of 15*l*. shall be paid to *C. D.*, being the party injured by the said offence, as a satisfaction for the same; and that afterwards the sum of 10*l*. shall be paid to *S. S.*, who informed us of the said offence; and that the sum of 10*l*. being the remainder of the said penalty, shall be paid to the overseers of the poor of the town of *M.* aforesaid, where the said conviction is, to be distributed to and amongst the poor of the said town; and that in case the said penalty shall not be paid on this conviction, the said *J. S.* shall be committed to the house of correction at ———, in the said county, for six months, unless the said penalty shall be sooner paid."

It is to be observed, that § 20., which gives the appeal, directs, that in default of payment of the penalty, on affirmance of the conviction, the party is to be committed for the same time as shall be directed upon the original judgment of conviction.

17 G.3. c.56. Upon a proceeding under § 10. & 12. the following form seems to be proper.

Lancashire } to wit. } *BE it remembered, that on the* —— *day of* ——, *in the year of our Lord* 18—, John Smith, *of* Manchester, *in the said county, weaver, is convicted before us* ——, *two of his majesty's justices of the peace in and for the said county, of a misdemeanor; for that on the* —— *day of* ——, *in the year aforeaid,* T. Y. *and* M. N., *esquires, two of his majesty's justices of the peace for the said county, upon complaint made to them, upon oath, by one* X. Z., *being a credible person, that there was cause to suspect that certain purloined or embezzled materials of cotton were concealed in the dwelling house of the said* John Smith, *at* Manchester *aforesaid, by virtue of a warrant under their hands and seals, pursuant to the statute in such case made and provided, did cause the said dwelling house to be searched in the daytime, and that upon such search, certain materials, used in the manufacture of cotton, to wit, 50lbs. weight of cotton wool, suspected to be purloined or embezzled, were found in the same dwelling house, and the said materials so found as aforesaid, and the said* John Smith, *were thereupon, to wit, on the said* —— *day of* ——, *brought before us the said justices first above named; and the said* John Smith *being so brought before us, the said last-mentioned justices did request of us to appoint a reasonable time to produce one* J. D., *whom he alleged to be the person duly entitled to sell or dispose of the said materials from whom he bought the same, and also one* R. R. *a credible witness, to prove the sale and delivery thereof, and we did therefore appoint the said* —— *day of* ——, *being a reasonable time for the purpose aforesaid, and we did issue our summons to the constable of the township of* Salford, *in the said county, where the said* J. D. *and* R. R. *did reside, to appear before us on the said* —— *day of* ——, *to be examined and give evidence on oath of the matter aforesaid, on which said* —— *day of* ——, *the said* J. D. *and* R. R. *did appear before us, and being sworn and examined, did severally depose, that they had not any knowledge of the said materials so found in the said dwelling house of the said* John Smith *as aforesaid, and the said* John Smith *did not give any account to the satisfaction of us the said justices, how he came by the said materials, contrary to the statute in that case made and provided, whereby the said* John Smith *hath forfeited the sum of* 20l. *being his first offence; one moiety thereof is to be paid to the said* X. Z., *being the informer in this behalf, and we adjudge the other moiety thereof to be paid to the treasurer of the infirmary, at* Manchester *aforesaid, being a public charity, for the use of the said charity.*

Appeal. By stat. 17 *G.* 3. *c.*56. § 20. If any person shall think himself aggrieved by any order or judgment of the two justices, he may appeal (and at the time of the conviction the justices shall make known to him his right to appeal) to the next general or general quarter sessions; such person, at the time of the conviction, giving to the justices notice in writing of his intention to appeal, and entering into recognisance with sufficient sureties to try the appeal

and to abide the judgment of and pay such costs as shall be awarded by the sessions: but if he shall not at the time of giving notice enter into such recognisance, the justices to whom such notice of appeal shall have been given, shall commit him to the house of correction or other public prison, there to remain until the next sessions, unless such recognisance shall be sooner entered into. And the justices at such sessions on proof of notice shall hear and determine the appeal and award costs to either party. And if the judgment be affirmed, the appellant shall within 48 hours suffer such corporal punishment, as was directed to be inflicted upon him for the offence; or shall immediately pay the sum which he shall have been adjudged to forfeit, together with the costs of the appeal; or in default of such payment shall be committed to the common gaol, or house of correction, in the same manner, and for the same time, to be computed from the affirmance of the conviction, as shall be directed by the original judgment, unless he hath been imprisoned under the original conviction, in which case the time for which he shall have been so confined shall be included in the order of confirmation.

17 G.3. c.56.

Appeal.

Upon a conviction by two justices for an offence against stat. 17 *G.* 3. *c.* 56. § 14. If the justices at the time of such conviction make known to the person convicted his right to appeal, and he declines appealing, they need not proceed to inform him of the necessary steps to be taken by him in order to appeal. *Rex* v. *The Just. of W. R. of Yorkshire,* 3 *M. & S.* 493.

Conviction to be filed.

By stat. 17 *G.* 3. *c.* 56. § 22. The conviction shall be certified to the next sessions, there to be filed amongst the records. And no proceeding hereupon shall be quashed for want of form, nor removable by *certiorari* into the court of K. B.

The 17 G.3. c.56. § 22. takes away the writ of *certiorari* only from offences for the first time created by 22 G.2. c.27., and does not apply to those created by 12 G.1. c.34., and extended to the silk and cotton trades by 22 G.2. c.27.

R. v. *Rogers, E.* 3 *G.* 4. 5 *B. & A.* 773. A rule *nisi* had been granted for a *certiorari* to remove an order of sessions, of the town and county of *Nottingham,* confirming a warrant of distress, signed by two magistrates, for enforcing the payment of wages, said to be due from *Thomas Kay* to *William Rogers,* for work done by the latter in the silk manufacture and the cotton manufactory. The wages, for which the warrant issued, had been paid previously in goods, which payment the magistrates altogether disallowed. The sessions, on appeal, considered the point of law so doubtful, that they confirmed the order, subject to a special case. The question was, whether the *certiorari* was taken away. After argument; *Bayley* J. (*Abbott* C. J. and *Best* J. having left the court.) By stat. 22 *G.* 2. *c.* 27. a variety of specific offences were created; and that having been done, by the last clause the provisions of the act of 12 *G.* 1. *c.* 34. were extended to the silk and cotton trade. Now, I think that the best construction we can give to stat. 17 *G.* 3. *c.* 56. § 22., on which the question turns, will be to hold, that it extends only to the offences created for the first time by stat. 22 *G.* 2. *c.* 27. If so, the writ of *certiorari,* in the present case, is not taken away. Writ of *certiorari* granted. See stat. 17 *G.* 3. *c.* 56. § 20. *ante* p. 148.

14 G.3. c.44. False reeling of yarn.

By stat. 14 *G.* 3. *c.* 44. § 1. So much of stat. 22 *G.* 2. *c.* 27. as relates to the punishment for reeling false and short yarn is repealed. And by § 2. If any person shall reel false or short yarn and shall be thereof convicted *by the oath of the owner of the yarn,* or of

14 G.3. c.44. one witness, or by confession, before one justice where the offence was committed, or the offender shall reside; (*he*) shall, for the first offence, forfeit not exceeding 20*s*. nor less than 5*s*.; for the second offence, not exceeding 5*l*. nor less than 40*s*.; and for the third and every other offence it shall be lawful for the justice to commit him to the house of correction or other public prison, there to be kept to hard labour for one calendar month, and also to order him to be once publicly whipped at the market town nearest to the place where the offence was committed, on a market day. All which forfeitures shall go to the party aggrieved.

§ 3. And the conviction shall be in this form: —

Form of conviction.

BE it remembered, that on the ——— day of———, in the year of our Lord ———, A. B. *is convicted before me,* [or *us,*] ——— *of his majesty's justices of the peace for* ——— [specifying the offence, and the time and place when and where the same was committed, and also specifying that it is the first, second, or third offence against this act, as the case shall be]. *Given under my hand and seal,* [or, *our hands and seals,*] *the day and year aforesaid.*

Which conviction shall be written on parchment, and filed at the next sessions.

Appeal. Recognisance. Costs.

§ 5. If any person so convicted shall be desirous of appealing to the next sessions, he may, at the time of the conviction, enter into recognisance, conditioned to try such appeal, abide the order of and pay such costs as shall be adjudged by the justices at such sessions. And the justices there shall take cognisance of the appeal, and may *affirm* such conviction, and award such costs as they shall think proper; and if not paid according to the order of the said justices, such costs may be recovered by distress and sale of the goods of the person who ought to pay the same, by warrant of one justice where such person shall be or reside; for want of distress, to be committed to the common gaol for three calendar months. And no proceedings on this act shall be quashed for want of form, nor removed by *certiorari* or other process.

By the oath of the owner of the yarn.] This is a singular instance of a conviction on the oath of a person doubly interested, namely, both as owner of the goods, and as entitled to the whole forfeiture.

(*He*) *shall for the first offence.*] The word *he* is wanting in the act, to make up the sense.

May *affirm* such conviction.] By the word *affirm* being mentioned, and not the word *quash* also, it may be doubted whether the sessions hath hereby sufficient power given to quash the conviction.

15 G.3. c.14. Recovering penalties for reeling false or short yarn.

By stat. 15 *G*. 3. *c*. 14. If the said pecuniary penalties for reeling false or short yarn, together with the costs and charges attending the prosecution, shall not be paid according to the order of the justice or justices by whom the conviction shall be made, the same shall be levied by distress, together with the costs and charges of distress and sale; and if goods sufficient cannot be found to answer the penalties and costs, such justice shall commit the offender to the common gaol or house of correction for one

calendar month, unless such penalties, and forfeitures, and charges, and the charges of distress and sale, shall be sooner paid. And the persons aggrieved on this act may appeal to the next sessions, who shall finally hear and determine the matter of complaint, and make such order as shall seem to them reasonable. **15 G.3. c.14.**

The stat. 22 *G.* 3. *c.* 40. by § 4, 5. repeals so much of stat. 12 *G.* 1. *c.* 34. (*viz.* § 7.) and of stat. 6 *G.* 3. *c.* 28. (*viz.* § 15.) as relates to the punishment of persons destroying any woollen or silk manufactures, or any implements prepared for or used therein. *Vide* the title of the act. **22 G.3. c.40.**

And now by stat. 4 *G.* 4. *c.* 46. § 2. After reciting that, whereas by stat. 4 *G.* 3. *c.* 37. (*viz.* § 16.) provision was made for the capital punishment of persons convicted of divers offences, in stealing, cutting, and destroying linen yarn, linen cloth, or manufactures of linen yarn, and the looms, tools, and implements used therein: and whereas by stat. 22 *G.* 3. *c.* 40. (*viz.* § 1. 3.) provision was made for the capital punishment of persons convicted of divers offences, in destroying the woollen, silk, linen, and cotton manufactures, and the tools, tackle, and utensils used therein: and that whereas it is expedient to provide a lesser degree of punishment for such offences, and to amend some defects in the said two acts, and to incorporate therewith the provision made by stat. 28 *G.* 3. *c.* 55. (see Vol. V. *tit.* Stocking Frames,) for the punishment of persons convicted of divers offences in cutting and destroying framework-knitted pieces, stockings, and other like articles, and breaking, destroying, and damaging frames, machines, engines, tools, instruments, and utensils used in the same manufacture and machinery in the said act mentioned; it is enacted, that from and after the passing of this act, (*viz.* 4th *July*, 1823,) the whole of the said recited act of the 22 *G.* 3., except so much thereof as repeals former acts, and so much of the said recited acts of the 4th & 28th *G.* 3., as create felonies, in stealing, damaging, or destroying manufactures, implements, or machinery, shall be and the same are hereby repealed, save only as to offences committed before the passing of this act, as to which the said three last-recited acts shall continue in force; and that from and after the passing of this act (*viz.* 4th *July*, 1823,) if any person shall by day or by night break into any house, shop, or building, or enter by force into any house, shop, or building, with intent to cut, break, destroy, or damage, in the loom or frame, or on any machine or engine, or on the rack or tenters, or in any stage, process, or progress of manufacture, any woollen, silk, linen, or cotton goods, or any goods of any one or more of those materials mixed with each other, or mixed with any other material; or to cut, break, destroy, or damage any other article of the woollen, silk, linen, or cotton manufactures in the loom or frame, or on any machine or engine, or on the rack or tenters, or in any stage, process, or progress of manufacture; or to cut, break, destroy, or damage any warp or shute of woollen, silk, linen, or cotton, or of any one or more of those materials mixed with each other, or mixed with any other material, or any framework-knitted piece, stocking, hose, or lace; or to burn, break, cut, destroy, or damage any loom, frame, machine, engine, rack, tool, tackle, utensil, instrument, or implement, whether fixed or moveable, prepared for or employed in carding, spinning, throwing, weaving, fulling, shearing, or othewise manufacturing **4 G.4. c.46.**

Punishing persons by transportation or imprisonment, at discretion of the court, for destroying woollen, silk, linen, or cotton goods, &c. in the loom, &c.

4 G.4. c.46.

or preparing any such goods or articles; or shall wilfully and maliciously, and without lawful authority, cut, break, destroy, or damage any such woollen, silk, linen, cotton, or mixed goods, or articles, in the loom or frame, or on any machine or engine, or on the rack or tenters, or in any stage, process, or progress of manufacture; or burn, break, cut, destroy, or damage any such loom, frame, machine, engine, rack, tool, tackle, utensil, instrument, or implement as aforesaid; or counsel, procure, aid, or abet the commission of the said offences, or of any of them; every person so offending, being thereof lawfully convicted, shall be guilty of felony, and shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned only, or to be imprisoned and kept to hard labour in the common gaol or house of correction, for any term not exceeding seven years.

17 G.3. c.11. Regulations in the counties of York, Lancaster, and Chester.

Finally, with respect to the several counties of *York*, *Lancaster*, and *Chester*, additional regulations are made by stat. 17 *G.* 3. *c.* 11., which enacts that committees of the manufactures from time to time shall appoint inspectors, who shall examine the reels and yarn, and cause offenders to be convicted; and for the expences thereof a fund shall be established out of the drawbacks of the duty on soap allowed to the manufacturers for soap consumed in the woollen manufacture. Which regulations being of considerable length, and only concerning the said three counties, it is thought sufficient to refer to the statute itself.

5 G.4. c.96. repealing 39 & 40 G.3. c.106. 41 G.3. (U.K.) c.38. 44 G.3. c.87.

By stat. 5 *G.* 4. *c.* 96. § 1. stats. 39 & 40 *G.* 3. *c.* 106. 41 *G.* 3. (U.K.) *c.* 38. and 44 *G.* 3. *c.* 87. Regulating disputes between masters and workmen in the *cotton manufacture* are repealed, save and except in as far as the same may have repealed any prior acts or enactments.

§ XVIII. Disputes between Masters and their Workmen, in the Bone and Thread-lace Manufactory.

[Stat. 19 G.3. c.49.]

19 G.3. c.49. Wages to be paid in money.

By stat 19 *G.* 3. *c.* 49. § 1, 2. All lace-merchants and dealers in lace, and all other persons who shall employ any person in the making of bone or thread-lace, or who shall buy any such of the maker thereof, shall pay such persons for their labour and for all the lace so bought of them in money only (*a*), and not with goods or by way of truck, or in any other manner, either in the whole or in part; on pain of 10*l.* to the party aggrieved; by warrant of one justice by distress; for want of sufficient distress, to be committed to the common gaol, prison, or house of correction for six calendar months, unless such penalty and the charges attending the recovery thereof be sooner paid.

How to be recovered.

§ 3. And if any money shall be owing to any person employed in the making of any bone or thread-lace for his labour, or for the purchase of any such lace, such person shall apply to a justice; and if on the oath of the complainant, the money appears to the justice to be due and owing, the same may be recovered and levied in like manner as the aforesaid penalty.

(*a*) N. B. — Stat. 58 G. 3. *c.* 51. § xxvii. does not appear to apply to this statute.

§ 4. Persons aggrieved may appeal to any sessions to be holden within six calendar months after the cause of complaint shall arise, giving 14 days' notice to the person in whose favour the act shall be done; and the sessions shall hear and finally determine the same, and may award costs to either party, and levy the same by distress. 19 G.3. c.49. Appeal.

§ XIX. Disputes between Masters and their Workmen in the Manufactures of Clocks and Watches.

[Stat. 27 G.2. c.7.]

By stat. 27 *G.* 2. *c.* 7. § 1. If any person hired or employed by any one practising the trade of clock-making or watch-making, or any part or branch thereof, to make, finish, alter, repair, or clean any clock, watch, or part thereof; or entrusted by any person practising the said trade or trades, with any gold, silver, or other metal or material, to be or that shall be in the whole or in part wrought or manufactured for any part of a clock or watch, or any diamond, or other precious stone, to be or that shall be set or fixed in or about any clock or watch; shall purloin, embezzle, secrete, sell, pawn, exchange, or otherwise unlawfully dispose of any clock, watch, gold, silver, or other metal or material, or any part thereof, or any diamond or other precious stone, with which he shall be so entrusted; and shall be thereof convicted by the oath of the owner, or other credible witness, or confession, before one justice where the offence shall be committed or the person so charged shall reside, he shall for the first offence forfeit 20*l.*, and if not forthwith paid, the justice shall commit him to the house of correction or other public prison, there to be kept to hard labour for the space of 14 days, unless the forfeiture shall be sooner paid; and if within two days before the expiration of the said 14 days, such forfeiture shall not be paid, the said justice may order him to be publicly whipped at the market-place, or some other public place of the city, town, or place, where such offender shall be committed; and for a second or other subsequent offence, he shall forfeit 40*l.* in like manner; and if not paid forthwith, the justice shall commit him as aforesaid, there to be kept to hard labour for any time not exceeding three months nor less than one month, unless the forfeiture shall be sooner paid; and if within seven days before the expiration of the time for which he shall be committed the forfeiture shall not be paid, the justice may order him to be publicly whipped in like manner twice or oftener, as to such justice shall appear reasonable.

27 G.2. c.7. Workmen embezzling materials put out to work.

Oath.

First offence.

Second offence.

§ 2. And if any person shall buy, receive, accept, or take by way of gift, pawn, pledge, sale, or exchange, or in any other manner, of or from any person whomsoever any clock, or watch, or part thereof, or any gold, silver, or other metal or material as aforesaid, whether the same or any part thereof be or be not wrought or manufactured, or any such diamond or other precious stone, knowing the same to be so purloined or embezzled; he shall, on the like conviction, for the first offence forfeit 20*l.*, and if not forthwith paid, the justice shall commit him in like manner, there to be kept to hard labour for 14 days, unless the forfeiture shall be sooner paid, and if within two days before the expiration of the said 14 days the said forfeiture shall not be paid, the justice shall order him to be publicly whipped as aforesaid, once or

Persons knowingly receiving the same.

First offence.

27 G. 2. c. 7. oftener, as to such justice shall appear reasonable; and for a Second offence. second or other subsequent offence, he shall forfeit 40*l.*, and if not forthwith paid, the justice shall commit him as aforesaid, there to be kept to hard labour for any time not exceeding three months, nor less than one month, unless the forfeiture shall be sooner paid; and if within seven days before the expiration of the time for which he shall be committed the forfeiture shall not be paid, the justice shall order such offender to be publicly whipped as aforesaid, twice or oftener, as to him shall appear reasonable.

Justice may issue warrant. § 5. And one justice on complaint to him made upon oath of any offence against this act may issue his warrant for apprehending and bringing before him, or before any other justice of the same place, the person so charged.

§ 4. And the conviction shall be in this form:—

Conviction. Middlesex } *BE it remembered, that on the* ——— *day of* ———, to wit. } *in the* ———— *year of his majesty's reign,* A. B. *was convicted before me* [or, *us*] ———, *of his majesty's justices of the peace for the said county of* ———, *or for the* ——— *riding* [or *division*] *of the said county of* ————, *or for the city, liberty, or town of* ————, *in the said county of* ———— [as the case shall be] *of purloining, embezzling, secreting, selling, pawning, exchanging, or unlawfully disposing of, or of buying, receiving, or taking to pawn* [as the case shall happen to be] ———— [specifying the respective goods, materials, or effects] *the property of* C. D. *of* ————, *in the county of* ——— ——. *Given under my hand and seal* [or, *our hands and seals*] *the day and year aforesaid.*

Appeal. § 3. If any such person so convicted shall think himself aggrieved by the judgment of the justice, he may appeal to the next sessions; in which case the execution of the judgment shall be suspended, the person so convicted entering into a recognisance at the time of the conviction, with two sureties in double the sum adjudged, to prosecute the appeal with effect, and to be forthcoming to abide the judgment and determination of the justices in such sessions; and the justices there shall hear and determine the same, and award such costs to either party as to them shall appear just and reasonable; and if the judgment shall be affirmed, the appellant shall immediately pay the sum adjudged, together with such costs as shall by the court be awarded; or in default thereof shall suffer the penalties as for purloining, embezzling, or receiving as aforesaid.

Application of the penalties. § 2. The said forfeitures, after satisfaction made thereout to the party injured, together with such costs of prosecution as the justice shall judge reasonable, shall go to the use of the poor where the offender shall reside.

Conviction to be filed. § 4. The conviction shall be fairly written upon parchment, and transmitted to the next sessions, there to be filed and kept among the records.

§ 4. And the same shall not be removed by *certiorari.*

§ XX. Disputes between Paper-makers and their Workmen.

[5 G. 4. c. 95.]

By stat. 5 *G.* 4. *c.* 95. § 1. The stat. 36 *G.* 3. *c.* 111. intituled *An act to prevent unlawful combinations of workmen employed in the paper manufactory* is repealed.

§ XXI. Disputes between Masters and Servants in Husbandry, Artificers, Calico Printers, Handicraftsmen, Miners, Colliers, Keelmen, Pitmen, Glassmen, Potters, and other Labourers.

[Stats. 20 G. 2. c. 19. — 27 G. 2. c. 6. — 31 G. 2. c. 11. — 6 G. 3. c. 25. — 57 G. 3. c. 122. — 58 G. 3. c. 51. — 4 G. 4. c. 34.]

By construction of law upon stat. 5 *El. c.*4. the justices had a power of compelling the payment of the wages which they had rated and assessed; but that statute being deficient in two material points, to wit, in extending only to such wages as should be rated, and to servants in husbandry only; and moreover there being therein (as hath been observed) no power to admit the servant's oath in evidence; therefore by stat. 20 *G.* 2. *c.* 19. after reciting, that "whereas the laws now in being, for the better regulation of servants, and for the payment of wages to them, and to artificers, handicraftsmen, and labourers, are insufficient and defective;" for remedy whereof it is enacted, that after the 25th *March*, 1747, "all complaints, differences, and disputes, which shall happen or arise between masters or mistresses, and servants in husbandry, who shall be hired for one year, or longer, or which shall happen or arise between masters and mistresses, and artificers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters, and other labourers employed for any certain time, or in any other manner, shall be heard and determined (A) by one or more justice or justices of the peace, of the county, riding, city, liberty, town corporate, or place where such master or mistress shall inhabit, (*a*) although no rate or assessment of wages has been made that year by the justices of the peace of the shire, riding, or liberty, or by the mayor, bailiffs, or other head officer, where such complaints shall be made, or where such differences or disputes shall arise; which said justice or justices is and are hereby empowered to examine upon oath (B) any such servant, artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, or other labourer, or any other witness or witnesses touching any such complaint, difference, or dispute, and to make such order (C) for payment of so much wages to such servant, artificer, handicraftsmen, miner, collier, keelman, pitman, glassman, potter, or other labourer, as to such justice or justices shall seem just and reasonable, provided that the sum in question do not exceed ten pounds with regard to any servant, nor five pounds with regard to any artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, or labourer; and in case of refusal or non-payment of any sums so ordered, by the space of 21 days next after such determination, (*b*) such justice and justices shall and may issue

20 G. 2. c. 19.

Differences between masters and certain servants, to be determined by a justice of the peace where the master resides. A.

Justsice to examine servants &c. upon oath, B. and make order C. for payment of wages due, if under a certain sum. Not exceeding 10*l.* with regard to any servant, nor 5*l.* with regard to any artificer, &c.

(*a*) See stat. 4 G. 4. c. 34. § 4. as to recovery of wages in absence of masters, *post.*

(*b*) But now by stat. 4 *G.* 4. *c* 34. § 5. *post.* Every justice or justices of the peace, before whom any complaint shall be made in pursuance of stat. 20 *G.* 2. *c.* 19. or of stat. 31 *G.* 2. c. 11., shall and may order the amount of the wages that shall appear due to any servants in husbandry, artificers, labourers, or other persons named in the said acts, or either of them, to be paid to the person entitled thereto, within such period as the said justice or justices shall think proper; and in case of refusal or nonpayment thereof, shall and may levy the same

4 G. 4. c. 34. Justices may order payment of wages within such time as they may think fit, on complain

20 G. 2. c. 19.

D. On non-payment, to be levied by distress and sale.

forth his and their warrant (D) to levy the same by distress and sale of the goods and chattels of such master or mistress, or person employing such artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, or other labourer, rendering the overplus to the owner or owners, after payment of the charges of such distress and sale." *Vide* stat. 53 *G.* 3. *c.* 40. *ante*, § III.

31 G. 2. c. 11. 20 G. 2. c. 19. Extended to servants employed in husbandry, although hired for a less time than a year.

By stat. 31 *G.* 2. *c.* 11. § 3. After reciting stat. 20 *G.* 2. *c.* 19. § 1. and that doubts have arisen whether the words, any labourers employed for any certain time, or in any other manner, extend to servants in husbandry hired for a less time than one year; for obviating the said doubts, it is enacted, that the said act, and all and every clause and matter therein contained, shall, from and after the 1st day of *May*, 1758, be deemed and construed to extend to all servants employed in husbandry, though hired for a less time than one year.

Justices to hear masters' complaints on oath; F. G. and to punish the offender, by commitment, H. I. abatement of wages, or dismission. Justices to hear servants' complaints on oath, K. L. and to summon the master, &c. and, upon satisfactory proof, to discharge the servant. M.

By stat. 20 *G.* 2. *c.* 19. § 2. it is enacted, "that it shall and may be lawful to and for such justice or justices, upon application or complaint (E) made, upon oath, by any master, mistress, or employer, against any such servant, artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, or labourer, touching or concerning any misdemeanor, miscarriage, or ill behaviour, in such his or her service or employment (which oath such justice or justices is and are hereby empowered to administer) to hear, examine, and determine the same (F); and to punish the offender by commitment (G) to the house of correction, there to remain and be corrected (*a*), and held to hard labour for a reasonable time, not exceeding one calendar month, or otherwise by abating some part of his or her wages (H), or by discharging (I) such servant, artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, or labourer, from his, her, or their service or employment: and in like manner also it shall and may be lawful to and for such justice or justices, upon any complaint or application, upon oath, by any such servant (K), artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, or other labourer, against such master, mistress, or employer, touching or concerning any misusage, refusal of necessary provision, cruelty, or other ill treatment of, to, or towards such servant, artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, or other labourer, and to summon (L) such master, mistress, or employer, to appear before such justice or justices, at a reasonable time to be prefixed in such summons; and such justice or justices shall and may examine into the matter of such complaint, whether such master, mistress, or employer shall appear or not; proof being made, upon oath, of his or her being duly summoned; and upon proof thereof made, upon oath, to his or their satisfaction, to discharge (M) such servant, artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, or other labourer, of and from his said service and employment; which discharge shall

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made pursuant to 20 G. 2. c. 19. or 31 G. 2. c. 11. by distress and sale, in manner directed by the said first-mentioned act, and every order or determination of such justice or justices made under this act shall be final and conclusive, any thing in either of the said acts contained to the contrary in any wise notwithstanding.

(*a*) This, which is a necessary part of the judgment, means corporal punishment by whipping, *R.* v. *Hoseason*, 14 *East*, 605.; but by stat. 1 *G.* 4. *c.* 57. judgment of whipping can in no case be awarded against a female. *Vide post*, tit. Women.

be given under the hand and seal, or hands and seals, of such justice or justices *gratis*." 20 G. 2. c. 19.

[§ 3. & 4. of this act relate to apprentices.]

§ 5. Provided, "that if any person or persons should think himself, herself or themselves aggrieved by such determination, order, or warrant of such justice or justices as aforesaid (save and except any order of commitment), he, she, or they may appeal to the next general quarter sessions of the peace to be held for the county, riding, liberty, city, town corporate, or place where such determination or order shall be made; which said next general quarter sessions is hereby empowered to hear and finally determine the same, and to give and award such costs to any of the respective persons, appellant or respondent, as the said sessions shall judge reasonable, not exceeding 40*s.*; the same to be levied by distress and sale, in manner before mentioned." The justices' decision under stat. 4 *G.* 4. *c.* 34. is final. See § 5. *ante*, p. 155. note (*b*).

Persons aggrieved may appeal.

Costs.

§ 6. Provides, "that no writ of *certiorari*, or other process, shall issue or be issuable to remove any proceedings whatsoever, had in pursuance of this act, into any of H. M.'s courts of record at *Westminster*."

Writ of certiorari not issuable.

By stat. 27 *G.* 2. *c.* 6. § 1. the seventh sect. of stat. 20 *G.* 2. *c.* 19. is repealed. 27 G. 2. c. 6.

§ 2. Enacts, that from and after the 1st day of *May*, 1754, all the provisions and regulations in the said act (20 *G.* 2. *c.* 19.) mentioned and contained, relating to servants in husbandry, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters, and other labourers, shall extend to such tinners and miners as are or shall be employed in the Stannaries in the counties of *Devon* and *Cornwall* respectively, as fully and effectually to all intents and purposes, as if the said provisions and regulations were herein particularly repeated and set forth; any law, &c. to the contrary, in any wise notwithstanding.

Provisions in 20 G. 2. c. 19. relating to servants, &c. extended to tinners, &c.

§ 3. Nothing in this act contained shall be construed to hinder or restrain any person from applying to the Stannary courts, or to the warden, vice-warden, or stewards of the Stannaries, in relation to any of the matters hereinbefore mentioned, in the same manner as such person might have done before the making of this act.

Stannary courts.

It was supposed, until a late determination, that the words in stat. 20 *G.* 2. *c.* 19., "and other labourers," meant only labourers in any of the enumerated trades; but in the case of *Lowther* v. *The Earl of Radnor and Eyre*, 8 *East*, 113., they received a more enlarged construction. To an action of trespass for taking the plaintiff's goods, the defendants, who were justices of the peace for the county of *Wilts*, justified under this statute; and on the trial a special case was reserved for the opinion of the court of K. B. On the 27th of *Nov.*, 1804, the defendants made this order: "*Wilts*, to wit. To *T. Lawes* one of the tithing men, &c. Whereas *J. Sopp* of, &c. labourer, hath complained unto *J. T. B.* one of the justices, &c. that *G. Lowther*, esq. of, &c. refused to pay unto him. the said *Sopp* 4*l.* 13*s.* 6*d.* for wages justly due to him for work and labour done by the said *J. Sopp* and by *T. Franklin* in the service of the said *G. Lowther*, by digging and steaning part of a well at," &c. The order then stated that Mr. *Lowther* was summoned to answer the complaint, but that he did not appear, and that the defendants, as justices, examined, at the time and place appointed, into the complaint, and adjudged it to

Other labourers.

Lowther v. The Earl of Radnor and Eyre.

be true, and ordered Mr. *Lowther* to pay the money to *J. Sopp*. Mr. *Lowther* appealed to the *Wiltshire* quarter sessions against this order, where the order was affirmed. After this, the two defendants made a warrant of distress against Mr. *Lowther*, stating all the above facts, under which the plaintiff's goods were taken The case also stated, that "*steaning a well*" means lining it with stones and mortar. That *Sopp* had on other occasions been employed by the plaintiff as a labourer in husbandry. That the work was performed under a contract between the plaintiff and *Sopp*, by which the latter undertook to dig the well of a sufficient depth to supply the plaintiff's cattle with water, and for which, when it was deep enough to give a supply of water, he was to receive 2*s*. *per* foot. That in the execution of the work, *Sopp* was to employ whom he pleased to assist him, but the money was to be paid to *Sopp* alone. And that *Sopp* had before done other work for the plaintiff, for which he was paid by the piece and not by the day. *For the plaintiff*, it was contended, 1st, that the justices had no jurisdiction to make the original order; 2dly, if they had, that they exceeded their jurisdiction, by ordering the money which had been earned by *Sopp* and *Franklin* to be paid to *Sopp* alone; 3dly, that the plaintiff was not precluded from bringing his action by having appealed to the sessions. In the course of the argument, the court seemed to think that the second point was answered by the facts of the case, the contract having been made by *Sopp* alone, who was at liberty to employ any one under him: but they gave a decided opinion on the third point, that, if there were no original jurisdiction in the magistrates making the order, the appeal would not give it. On the principal question, however, the court took time to consider of their opinion, which was afterwards delivered by Ld. *Ellenborough* C. J.

Judgment of the court.

The question arising on this special case depends on the terms of the complaint made to the magistrates, as recited in the order of the 27th of *November*, 1804; and how far the terms of that complaint bring the complainant within the provisions of the statute 20 *G*. 2. *c*. 19. This complaint must be taken to be true in the terms of it; no evidence appearing to have been laid before the magistrates to contradict or vary it, and they having adjudged the same to be true. By this it appears that *Sopp* was a labourer; for he is described as "*J. Sopp*, of *Shrewton, labourer*;" and that his demand was for wages due to him for work and labour done by himself and another person, *T. Franklin*; by which must be understood, that *Sopp* was employed to do the work either by the day or the piece, and that *Franklin* assisted *Sopp* in the work, under the retainer of *Sopp*, and not of Mr. *Lowther*; a common practice with labourers as well in husbandry as in other business. Is *Sopp* then such a labourer as is by the statute 20 *G*. 2. *c*. 19. subjected to the jurisdiction of the justices of the peace; and of course entitled to the benefit of that jurisdiction, to recover his wages, being under 5*l*. by their summary process? The statute 20 *G*. 2. *c*. 19. begins by reciting, that "the laws, now in being for the better regulation of servants, and for the payment of wages to them, and to artificers, handicraftsmen, and labourers, are insufficient and defective," and for remedy enacts, that all complaints, differences, and disputes, which shall happen and arise between masters or mistresses, and servants in husbandry, who shall be hired for one year or longer, or which shall happen or arise

between masters and mistresses and artificers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters, *and other labourers*, employed for any certain time or in any other manner, shall be heard or determined by one or more justice or justices, although no rate or assessment of wages has been made that year by the justices. The stat. 31 *G.* 2. *c.* 11. § 3. recites the stat. 20 *G.* 2. *c.* 19., and that doubts had arisen whether the words, "any labourers employed for any certain time, or in any other manner," extend to servants in husbandry hired for a less time than a year; and, for obviating the said doubts, enacts that the said act and every clause and matter therein contained shall extend to all servants employed in husbandry, though hired for a less time than a year. In the argument of this case, it was contended that *Sopp* did not come within the meaning of the act of parliament 20 *G.* 2. *c.* 19., because he was not a servant in husbandry, nor a servant or labourer in any of the trades, callings, or employments enumerated in that act; and that the words used in the act, "*other labourers employed for any certain time or in any other manner*," meant labourers in any of the enumerated trades only, and not labourers generally. With the first part of the argument, that he is not to be taken as a servant in husbandry, we agree; because he is not stated to be so in the order or complaint; and we cannot intend any thing to give the justices jurisdiction beyond what appears in the order. *R.* v. *The Inhabitants of Hulcott*, 6 *T. R.* 583. But we cannot accede to the latter part of the argument, that the operation of the statute is to be confined to labourers in the several enumerated employments. The most obvious construction is not so to confine it; and no case has been stated where the construction has been so confined. The mischief recited in the preamble of the act is general, viz. that the laws in being for the better regulation of servants, and the payment of wages to them, and to artificers, handicraftsmen, and labourers, are insufficient. The remedy provided by the act is, that all differences between masters or mistresses and servants in husbandry, who shall be hired for a year or longer (these words certainly restrain the operation of the remedy, as to servants, to those in husbandry only, and to such as are hired for a year or longer; the act then proceeds,) or (differences) which shall happen or arise between masters and mistresses and artificers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters, *and other labourers* employed for any certain time, or in any other manner. Now, unless these words, "other labourers," mean to comprehend a different description of persons from those before particularly mentioned, it is difficult to account for their insertion at all; but applying them to other labourers in any other trade or business, the sense will be perfect, and each word will have its meaning. But it may be said, that if such an extensive construction be put on these last words of the sentence, the former part, specifying certain trades, becomes nugatory. That, however, will not follow; for artificers, handicraftsmen, miners, &c. do not necessarily or properly fall under the denomination of labourers; there being, as I take it, a known distinction between a journeyman in any art, trade, or mystery, or other workmen employed in the different branches of it, and a labourer. It does not appear to us to be an objection to this construction, that by other acts of parliament passed sub-

Lowther v. The Earl of Radnor and Eyre.

Statute not confined to labourers in enumerated employments.

Lowther v. The Earl of Radnor and Eyre.

sequent to the 20 G. 2., workmen or labourers in other particular trades or manufactures, or labourers generally, are subjected to certain regulations which appear to clash with some of the provisions of this act; as the stat. 22 *G.* 2. *c.* 27. § 9. for regulating certain manufactures therein mentioned; and the stat. 6 *G.* 3. *c.* 25. for better regulating apprentices and persons working under contract; and other statutes which may be pointed out. The true answer seems to be, that at the time of passing one act, the legislature has not always had every other act containing provisions bearing on the same subject brought under its consideration. The act now under our consideration appears to have had for its object the affording to certain servants and workmen, and to labourers in general, a speedy, easy, and cheap mode of recovering their wages when they amount to a small sum; and to masters an easy method of correcting trifling misdemeanors and ill behaviour in their workmen and labourers. These benefits are by the words of the act extended to servants in husbandry, to workmen in different branches of trade, and to *other labourers* employed for any certain time or in any other manner. The latter words are as general as may be; and we cannot find any reason in law or policy to say that they do not comprehend the case of *Sopp*, as stated in the order of the two magistrates. For these reasons, we are of opinion, on the questions submitted to us by the special case, that the justices making the original order had jurisdiction to make that order; and of course that the quarter sessions had jurisdiction to make the order on the appeal. And judgment was given for the defendants.

It has recently been decided, that where a magistrate, in his adjudication on this act, avers a complaint made on oath, and an examination on oath, it is not competent *in replevin*, for taking the plaintiff's goods, for the plaintiff to plead in bar of a cognisance made under a warrant of distress and sale founded on that adjudication, that the servant did not duly make oath before the magistrate that the sum claimed was justly due to him for wages. Nor can he plead that the sum claimed was not due. *Wilson* v. *Weller*, 1 *Brod. & Bing.* 57. 3 *Moore, C.P.* 294. 8 *Taunt.* 521.

Where a magistrate has competent jurisdiction, and adjudges, and on refusal to pay, issues a warrant of distress and sale, the goods taken under it are not replevisable. *Dictum per Richardson* J. *S. C.*

R. v. Brampton.
A maid servant may be discharged by her master for being with child.

In the case of *R.* v. *Inhab. of Brampton, Cald.* 11. The principal question was, whether a maid-servant hired for a year could be discharged by her master three weeks before the end of the year (she being with child) by his own authority, without the intervention of a magistrate, so as to prevent her gaining a settlement. By Ld. *Mansfield* C. J. The question is, Has the master done right or wrong in discharging his servant for this cause? I think he did *not do wrong*. Shall the master be bound to keep her in his house? To do so would be *contra bonos mores;* and in a family where there are young persons, both scandalous and dangerous. *Willes* J. said, that this case differs from those of *R.* v. *Richmond, Burr. S. C.* 740. and *R.* v. *Islip*, 1 *Str.* 423. (see Vol. IV. tit. Poor, *Settlement by Service*,) where the cause of the discharge of the servant by the master was not reasonable. Here, if the master had daughters, it would not be fit that he

should keep such a servant, though I think he could not avail himself of the authority of a magistrate, the jurisdiction of justices being confined to cases in *husbandry*.

[Upon which case Mr. *Caldecott* observes, that all that seems established thereby is, that a master may, without the intervention of a magistrate, discharge his servant for *moral turpitude*, even though it be not such for which the servant may be prosecuted at common law. Whether he may or not for any other species of misconduct or general misbehaviour, though there are authorities to shew that he *cannot*, seems, from this case, not to be fully and absolutely settled. By the general practice throughout the kingdom, and particularly in large towns, this power, however warranted, is exercised by masters; certainly this question has not of late years been brought before the court for argument, except in the case of *Burrow* v. *Sayer*, 27 *G*. 2. But at the sittings at *Westminster*, 1773, it arose before Ld. *Mansfield*, in the case of *Temple* v. *Prescott*, where a wet nurse, retained for the year, was discharged by her mistress, who tended her her wages in proportion to the time she had served: this was refused, and the action brought for the whole year. It was proved, on behalf of the defendant, that the plaintiff had been frequently insolent to her mistress, the defendant's wife; and was subject to violent fits of passion, in which she had several times frightened, and once awakened her mistress while sleeping, before her recovery. It was also proved, that these fits of passion must be injurious to her milk; and it was insisted, that all these circumstances amounted to reasonable cause, and even created a necessity of discharging the plaintiff. But by Ld. *Mansfield*, "No person can be judge in his own cause; and this first principle could never be meant to be overturned by any law or usage whatsoever;" and though it was stated as the general usage or practice in *London*, *Westminster*, and the environs, to dismiss servants with a month's wages, it was disregarded by the court, and the servant had a verdict for the whole year's wages.]

Observations by Mr. Caldecott.

But Ld. *Ellenborough* C. J. at *N. P.* held that if a servant hired for a year refuse to obey his master's orders, the master is justified in dismissing him before the end of the year, and the servant cannot recover any wages. *Spain* v. *Arnott*, *Sitt. after M. T.* 58 *G*. 3. 2 *Stark. N. P.* 256. This was an action brought by the plaintiff to recover wages for his service from *Michaelmas* to *July*. The plaintiff was a yearly servant to the defendant, who was a farmer. The plaintiff usually breakfasted at five o'clock in the morning, and dined at two. One day the master ordered the servant to go with the horses to the *Marsh*, which was a mile off, before dinner, dinner being then ready. The plaintiff said, that he had done his due, and would not go till he had had his dinner: the defendant told him to go about his business, and the plaintiff went accordingly, without offering any submission, or to obey his master's orders. *On the part of the defendant*, it was contended, that the action was not maintainable, since the contract was a year's service in husbandry, which had not been performed. *For the plaintiff*, it was urged, that if the master had had any reason to complain of the conduct of the servant, he ought to have complained to a magistrate for relief. That the master could not, by turning the servant away

Spain v. Arnott.

before the completion of the year, dissolve the contract, and bereave him of his wages; it would be exceedingly hard if he could, for then he might put an end to the contract on the very last day. Ld. *Ellenborough* C. J.: If the contract be for a year's service, the year must be completed before the servant is entitled to be paid. If the plaintiff persisted in refusing to obey his master's orders, I think he was warranted in turning him away. He might have obtained relief by applying to a magistrate; but he was not bound to pursue that course, the relation between master and servant, and the laws by which that relation is regulated, existed long before that statute. There is no contract between the parties, except that which the law makes for them; and it may be hard upon the servant, but it would be exceedingly inconvenient if the servant were to be permitted to set himself up to control his master in his domestic regulations, such as the time of dinner. After a refusal on the part of the servant to perform his work, *the master is not bound to keep him on as a burthensome and useless servant to the end of the year.* In the present instance, it might be very convenient for the master to change the hour of dinner: the question really comes to this — whether the master or the servant is to have the superior authority? — A juror was afterwards withdrawn by consent.

Contract must be completed before wages are due.

A master may discharge his servant at a moment's warning for misconduct, (*e.g.* for being absent when wanted, sleeping from home at night without his master's leave, &c.) and in such case the servant will only be entitled to such wages as are due at the time of his discharge. *Robinson* v. *Hindman*, 3 *Esp.* 235.

But if the servant has not been guilty of misconduct, and the master discharges him without warning, the servant, in that case, will be entitled to a month's wages beyond the wages due for the period of actual service. *Admitted per Ld. Kenyon* C. J. *S. C.* 2 *Sel. N. P.* 1032.

Discharge for alleged criminality.

The master discharged a yearly servant on account of a *supposed* criminal intimacy with a servant girl, who had previously left the service big with child. The court of *K. B.* seemed clear, that if the criminality had been positively stated, it would have come within the principle of *R.* v. *Brampton.* It went down to be re-stated on that point, when, the fact of criminality being positively found, the case was abandoned. *R.* v. *Welford, Cald.* 57.

Not dischargeable, if the crime is committed prior to the service.

But in *R.* v. *Westmeon, Cald.* 129. It was said by Ld. *Mansfield* C. J. that the servant being the father of a bastard child, prior to the master's hiring him, and the crime not committed when in his own house, the master shall not discharge him under this pretence: it is not a debauching of his servant, or turning his house as it were into a brothel.

When a magistrate discharges a servant from the service of his master, it must appear on the face of the order itself to be a case within the jurisdiction of the magistrate. *Rex* v. *Hulcott*, 6 *T. R.* 583.

Whether insanity be a good cause for discharging a servant?

It does not appear to be settled whether the insanity of a servant be a good cause for discharging him. In *Rex* v. *Sutton*, 5 *T. R.* 659. Lord *Kenyon* C. J. appeared to be of opinion that insanity was not a legal cause for discharging a servant, but this opinion being cited and relied upon in a subsequent case (*Rex* v. *Inh. of Hulcott*, 6 *T. R.* 587.) his lordship said, " I am not

prepared to go that length; in that case there had been no application to a magistrate to discharge, and I think that the master could not of his own authority discharge the servant for that cause."

By stat. 6 *G.* 3. *c.* 25. § 4. After reciting that whereas it frequently happens that artificers, calico printers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters, labourers, and others, who contract with persons for certain terms, do leave their respective services before the terms of their contracts are fulfilled, to the great disappointment and loss of the persons with whom they so contract: for remedy whereof, it is enacted, "that from and after the 24th day of *June*, 1766, if any artificer, calico printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person, shall contract with any person whomsoever for any time or term whatsoever, and shall absent himself from his service before the term of his contract shall be completed, or be guilty of any other misdemeanor; that then, and in every case, it shall and may be lawful for any justice of the peace of the county or place where any such artificer, calico printer, handicraftsment, miner, collier, keelman, pitman, glassman, potter, labourer, or other person, shall be found, and such justice is hereby authorised and empowered, upon complaint (N) thereof made upon oath to him by the person with whom such artificer, calico printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person, shall have so contracted, or by his or her steward or agent, which oath such justice is hereby empowered to administer, to issue his warrant (O) for the apprehending every such artificer, calico printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person, and to examine into the nature of the complaint; and if it shall appear to such justice that any such artificer, calico printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person, shall not have fulfilled such contract, or hath been guilty of any misdemeanor, it shall and may be lawful for such justice to commit (*a*) (P) every such person to the house of correction for the county or place where such justices shall reside (*b*), for any time not exceeding three months, nor less than one month."

6 G. 3. c. 25.

Justices empowered to grant warrants against artificers and others not fulfilling their contract, or being guilty of any misdemeanour,

N

O

and upon conviction to commit the offender.

P

(*Sic.*)

A commitment in execution by a magistrate (on this act or any other act) must state that the party has been *convicted*: setting forth that he was *charged* on oath with the offence, is not sufficient. *Rex* v. *Cooper*, 6 *T. R.* 509. And see *Rex* v. *Rhodes*, 4 *T. R.* 220.

There must be a conviction in the warrant of commitment. The objection in *Rex* v. *Rhodes* was, that the warrant of com-

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(*a*) This act is meant only to punish for offences committed, and does not extend to the discharge of the servant, as the 20 G. 2. does. *Ante*, p. 156.

(*b*) "*To commit every such person to the house of correction for the county or place where such justices shall reside.*"] From these words, it seems, that a magistrate residing in the county of A., and acting for the adjoining county of B., and not for A., is only empowered to hear a complaint in B., but not to commit the servant to the house of corrrction for any other county than that of A., in which he actually resides.

mitment did not include a conviction: it only stated that he was *charged* before the justice with being a rogue and vagabond; and it did not proceed, as it ought to have done, to adjudge the defendant to be guilty of the offence charged. *Per Bayley* J. in *Rex* v. *the Just. of Staffordshire*, 12 *East*, 576.

4 G.4. c.34. Justices may issue warrants to apprehend servants in husbandry, artificers, &c.

By stat. 4 *G.4. c.*34. [after reciting in § 1. stats. 20 *G.2. c.*19. and 6 *G.3. c.*25.] It is enacted, § 3. that if any servant in husbandry or any artificer, calico printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person, shall contract with any person or persons whomsoever, to serve him, her, or them for any time or times whatsoever, or in any other manner, and shall not enter into or commence his or her service according to his or her contract (such contract being in writing, and signed by the contracting parties), or having entered into such service shall absent himself or herself from his or her service before the term of his or her contract, whether such contract shall be in writing or not in writing, shall be completed, or neglect to fulfil the same, or be guilty of any other misconduct or misdemeanor in the execution thereof, or otherwise respecting the same, then and in every such case it shall and may be lawful for any justice of the peace of the county or place where such servant in husbandry, artificer, calico printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person, shall have so contracted, or be employed or be found, and such justice is hereby authorised and empowered, upon complaint thereof made upon oath to him by the person or persons, or any of them, with whom such servant in husbandry, artificer, calico printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person shall have so contracted, or by his, her, or their steward, manager, or agent, which oath such justice is hereby empowered to administer, to issue his warrant for the apprehending every such servant in husbandry, artificer, calico printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person, and to examine into the nature of the complaint; and if it shall appear to such justice that any such servant in husbandry, artificer, calico printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer or other person, shall not have fulfilled such contract, or hath been guilty of any other misconduct or misdemeanor as aforesaid, it shall and may be lawful for such justice to commit every such person to the house of correction, there to remain and be held to hard labour for a reasonable time, not exceeding three months, and to abate a proportionable part of his or her wages, for and during such period as he or she shall be so confined in the house of correction, or in lieu thereof, to punish the offender by abating the whole or any part of his or her wages, or to discharge such servant in husbandry, artificer, calico printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person from his or her contract, service, or employment, which discharge shall be given under the hand and seal of such justice *gratis*.

and may commit offenders to the house of correction, &c.

How servants in husbandry, artificers, &c. shall recover their wages, in

§ 4. And whereas it frequently happens that such masters, mistresses, or employers reside at considerable distances from the parishes or places where their business is carried on, or are occasionally absent for long periods of time, either beyond the seas, or

at considerable distances from such parishes or places, and during such residence or occasional absences entrust their business to the management and superintendence of stewards, agents, bailiffs, foremen, or managers, whereby such servants, artificers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters, labourers, or other persons and apprentices, are or may be subjected to great difficulties and hardships, and put to great expence in recovering their wages; it is therefore enacted, that in either of the said cases, it shall and may be lawful to and for any justice or justices of the county or place where such servant in husbandry, artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person or apprentice shall be employed, upon the complaint of any such servant, artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person or apprentice touching or concerning the nonpayment of his or her wages, to summon such steward, agent, bailiff, foreman, or manager, to be and appear before him or them at a reasonable time to be named in such summons, and to hear and determine the matter of the complaint in such and the like manner as complaints of the like nature against any master, mistress, or employer are directed to be heard and determined in and by this and the before recited acts, and also to make an order for the payment by such steward, agent, bailiff, foreman, or manager, to such servant, artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person or apprentice, of so much wages as to such justice or justices shall appear to be justly due; provided that the sum in question do not exceed the sum of ten pounds: and in case of refusal or nonpayment of any sum so ordered to be paid by such steward, agent, foreman, bailiff, or manager, for the space of twenty-one days from the date of such order, such justice or justices as aforesaid shall and may issue forth his or their warrant to levy the same by distress and sale of the goods and chattels of such master, mistress, or employer, rendering the overplus to the owner or owners, or to such steward, agent, bailiff, foreman, or manager, for the use of such master, mistress, or employer, after payment of the charges of such distress and sale.

4 G.4. c.34.

cases of absence of masters, &c.

§ 5. It is enacted, that every justice or justices of the peace before whom any complaint shall be made in pursuance of the said recited stat. 20 *G.*2. *c.*19. or stat. 31 *G.*2. *c.*11. shall and may order the amount of the wages that shall appear due to any servants in husbandry, artificers, labourers, or other person named in the said acts, or either of them, to be paid to the person entitled thereto, within such period as the said justice or justices shall think proper; and in case of refusal or nonpayment thereof, shall and may levy the same by distress and sale, in manner directed by the said first mentioned act; and every order or determination of such justice or justices made under this act shall be final and conclusive, any thing in either of the said acts contained to the contrary in anywise notwithstanding.

Justice may order payment of wages within such time as they may think fit.

20 G.2. c.19. 31 G.2. c.11.

Justices' order under this act shall be final.

Stat. 6 *G.*3. *c.*25. § 5. Provides "that if any person shall think himself aggrieved by such determination, order, or warrant, of any justice of the peace as aforesaid, except an order of commitment, every such person may appeal to the next general quarter sessions of the peace to be held for the county or place where such

6 G.3. c.25. Persons aggrieved by the order of a justice, (except in cases of com-

6 G.3. c.25.

mitment) may appeal; giving notice to the justice, and entering into recognisance, &c.

determination or order shall be made; such person giving six days' notice of his intention of bringing such appeal, and of the cause and matter thereof, to such justice of the peace, and the parties concerned, and entering into a recognisance within three days' after such notice, before some justice of the peace for such county or place, with sufficient surety, conditioned to try such appeal at, and abide the order or judgment of, and pay such costs as shall be awarded by the justices at such quarter sessions; which said justices, at their said sessions, upon due proof of such notice being given, and of entering into such recognisance, as aforesaid, shall, and are hereby directed to proceed in, hear and determine the causes and matters of all such appeals; and shall give such relief and costs to the parties appealing or appealed against, as they, in their discretion, shall judge proper and reasonable; and their judgments and orders therein shall be final and conclusive to all parties concerned."

Justices at the quarter sessions empowered to determine the appeal, and award costs.

§ 6. Provides that nothing herein shall extend to the stannaries in *Devon* and *Cornwall*.

Except an order of commitment.] It has been expressly decided that no appeal lies to the sessions against a record of conviction and commitment in execution (which, under this act, appear to be one and the same thing) for three months of a collier for absenting himself from his master's service. *Rex* v. *the Justices of Staffordshire*, 12 *East*, 572. In this case Lord *Ellenborough* C. J. said, " It is not for us to say whether it may be convenient and proper to provide a remedy by appeal for a party grieved by a commitment in execution under this act: we can only declare what the legislature have said in this case: and when by excepting an order of commitment out of the appeal clause, they have said that there shall be no appeal against such an order, and when the commitment must for this purpose be taken to be one and the same thing with the conviction, we have no discretion left to exercise upon the subject, and it does not become us to scan the wisdom of the provision which the legislature have enacted."

R. v. Hoseason. The employer is the person on whose farm the employment is, and not the bailiff, though the contract of hiring may have been made personally with the bailiff.

Rex v. *Hoseason*, 14 *East*, 605. The defendant, a magistrate, having heard a complaint referred to him in his judicial character by the bailiff of his own farm against one *G. Battersby*, a labourer in husbandry, who had been employed upon the farm by the bailiff, and was charged by him for misconduct in his business and refusal to perform his work, had sentenced *Battersby* to be committed to the house of correction there, " *to be corrected*, and kept to hard labour for *one calendar* month," whereupon a criminal information was moved for against the defendant, grounded upon special circumstances of alleged misconduct, as well in respect of the general complexion of the case, as having been guilty of particular oppression in giving that judgment.— In the course of the discussion a question arose whether if the defendant committed *Battersby* to the house of correction at all, he was not bound to sentence him also *to be there corrected*, by which was understood to be corporally corrected by whipping, as had, in fact, been done. [See stat. 20 *G*. 2. *c*. 19. § 2. and stat. 6 *G*. 3. *c*. 25. for the better regulating apprentices and persons working under contract.] The court, upon consideration of the two statutes, were of opinion that if the commitment in question

(which was for *one calendar month*) were intended by the magistrate to be made under the act of the 20 *G.* 2. *the correction* thereby directed (by which they understood corporal punishment by whipping, and which they considered the sentence in question to import by the commitment to the house of correction *there to be corrected*,) was a necessary part of the judgment. But that under the latter statute, which enabled the justice to commit the offender to the house of correction for any time not exceeding three months, nor less than one month, bodily correction was no part of the sentence, and they thought that the punishment inflicted by the two acts could not be blended together, as they appeared to be by the precedent in *Burn's Justice*, (21st edition) which they said was incorrect in that respect. But though the Court thought that the sentence pronounced by the defendant in this case was legal in the form of it under the act of the 20 *G.* 2. yet Lord *Ellenborough* C. J., in delivering their opinion upon that point, strongly expressed his disapprobation of the conduct of the defendant for sitting in judgment as a magistrate upon the imputed misconduct of his own labourer, of which he himself was to be considered as the complainant, though in form the complaint was preferred by his bailiff. It was impossible, he observed, to consider the defendant's bailiff as the *employer* of the labourer upon the defendant's own farm, with the sense of that word in the act, though the contract of hiring was made personally by the bailiff; and that it was a most abusive interpretation of the law for a man to erect himself as a criminal judge over the servants on his own farm for an offence against himself. However, as the defendant appeared, from the circumstances of the whole case, to have acted in this respect from an error of judgment, rather than from any bad motive; and in the mode of punishment adopted by him, which had been urged in aggravation, as evincing a vindictive motive, was probably misled by the erroneous precedent above mentioned, which appeared to leave him no discretion in ordering corporal punishment, the Court finally discharged the rule upon the defendant's payment of all the costs of the application.

Sed vide forms N O P *in this edition.*

[Upon comparing the two statutes, viz. 20 *G.* 2. *c.* 19. & 6 *G.* 3. *c.* 25.; there appears to be a distinction as to the applicants: In the former act, it is to be on application *by any master, mistress, or employer*: by the latter act the complaint is to be by "*the person with whom the labourer shall have contracted, or by his steward or agent*:" and perhaps the punishment which may be legally affixed, may depend upon the station which the applicant may hold: and it also seems that the words *guilty of any misdemeanor*, in stat. 6 *G.* 3. *c.* 25., are much more general than the words "any *misdemeanor* IN HIS SERVICE," in stat. 20 *G.* 2. *c.* 19.]

57 G.3. c.122. Provisions of 12 G.1. c.34. extended to labourers in collieries.

By stat. 57 *G.* 3. *c.* 122. § 1. The provisions of stat. 12 *G.* 1. *c.* 34., which prohibits the payment of the wages of persons employed in the woollen manufacture in goods, and to secure the payment of every part of their wages in good and lawful money of this kingdom, are extended to labourers employed in working and getting coal in the U. K. of *G. B.* and *Ireland*.

58 G.3. c.51. Wages may be paid in bank notes if the party consents.

But by stat. 58 *G.* 3. *c.* 51. § 1. It shall be lawful for any person concerned in the employment of artificers, &c. to pay their wages in bank of *England* notes or the notes of any licensed banker, where such artificer, &c. shall freely and voluntarily con-

sent, and be willing to accept and receive the same in payment of their wages, but not otherwise. See post § XXVIII.

57 G.3. c.122. Provisions in 22 G.2. c.27. applicable to this act.

By stat. 57 *G.3. c.*122. § 2. All the provisions of stat. 22 *G.* 2. *c.* 27. to facilitate the labourers in the woollen trade recovering the wages for which they have stipulated, or to which they are entitled, as well as the provisions imposing a penalty on masters paying labourers in goods, are extended to persons employed in collieries, and in working and getting coal, in the U. K. of *G. B.* and *Ireland*, in as full and ample a manner as if they had been enumerated in the aforesaid act; and all remedies, penalties, modes of recovery, powers, and privileges, and all other matters and thing stherein for these purposes contained, are hereby extended to parties concerned in coal works, or connected therewith.

The provisions of recited acts extended to Scotland and Ireland.

§ 3. The provisions of the acts of the 12 *G.*1. and of the 22 *G.*2. are extended to *Scotland* and *Ireland*.

§ XXII. Taylors and their Workmen within the Bills.

[7 G. 1. stat. 1. c. 13. — 5 G. 4. c. 95.]

5 G.4. c.95. repealing 8 G.3. c.17. and 7 G.1. st.1. c.13. in part.

By stat. 5 *G.* 4. *c.* 95. § 1. the stat. 8 *G.* 3. *c.*17. regulating the wages and working hours of taylors is repealed: and stat. 7 *G.* 1. *st.* 1. *c.*13. intituled, "*An act for regulating the journeymen taylors within the weekly bills of mortality*," is also repealed, excepting so much thereof as relates to the recovery of wages, or to journeymen taylors, or servants departing from their service, or refusing to enter into work or employment, as therein mentioned.

7 G.1. st.1. c.13. Leaving work unfinished.

By stat. 7 *G.* 1. *st.* 1. *c.* 13. § 6. If any journeyman taylor or servant in the art of a taylor, shall depart from his service before the end of his term, or before his work for which he was hired be finished, or not being retained or employed, shall refuse to enter into work, unless for cause to be allowed by two justices, he shall be sent to the house of correction, there to be kept to hard abour for any time not exceeding two months.

Appeal.

l § 9. Persons aggrieved by any order of two justices as aforesaid, may appeal to the next sessions, giving six days' notice; and the sessions may award costs to either party: their decision to be final.

§ XXIII. Shoemakers and their Workmen within the Bills.

[9 G. 1. c.27.]

9 G.1. c.27. Purloining shoes or materials.

By stat. 9 *G.* 1. *c.*27. § 1. If any journeyman shoemaker or person hired or employed as such *within the bills of mortality* shall be accused by his master of purloining, embezzling, selling, pawning or exchanging any boots, shoes, slippers, cut leather or other materials for making the same, or other wares or materials, one justice, where the offence, shall be committed or the offender shall inhabit, on oath of such offence, may summon the party or issue his warrant to apprehend him; and if the same is proved before him by confession, or oath of one witness, he shall convict the offender and award satisfaction for damages and charges, and levy the same by distress: and for want of sufficient distress shall

cause the offender to be whipped where the offence was committed; and in case of a conviction for a second or other offence, he shall commit him to the house of correction, there to remain and be kept to hard labour not exceeding one month, nor less than 14 days. 9 G. 1. c.27.

§ 2. Every person who shall buy, receive, or take in pawn any boots, &c. not being the proper goods of the person selling, &c. shall for every such offence, on conviction as aforesaid, make such recompence within two days as shall be awarded, or be subject to distress, and for want of sufficient distress, be liable to the like punishment as aforesaid. Receiving.

§ 3. Two justices within the limits aforesaid, on complaint on oath may issue their warrant for searching in the day-time for goods so purloined, and break open doors; and every person hindering such search shall forfeit 10*l.* to him who shall sue in two calendar months, to be recovered by action: and if such goods shall be found, the justices shall restore them to the owner, and cause the offender to make satisfaction for the loss and damages in detaining, and charges in getting the same: and upon refusal, the party shall suffer as in cases of purloining. Power of the justices.

§ 4. Every person retained by one master, who shall neglect the performance of his work, by suffering himself to be retained or employed by any other before he hath finished his work, shall on conviction on oath of one witness, before one justice, be sent to the house of correction, there to be kept to hard labour not exceeding one month. Leaving work unfinished.

§ 5. Persons aggrieved may appeal to the next sessions, giving eight days' notice. Appeal.

§ XXIV. How far the Master is answerable for the Servant.

The master is indictable for a nuisance done by his servant as for throwing dirt in the highways. 1 *Ld. Raym.* 264.

But nevertheless it seemeth, that the servant also is indictable; for Mr. *Hawkins* says, that a servant is not excused the commission of any crime by the command or coercion of his master. 1 *Haw.* c. 1. § 14.

If a servant commit a trespass by the command or encouragement of his master, the master shall be guilty of it, though the servant is not thereby excused, for he is only to obey his master in matters that are honest and lawful. 1 *Blac. Com.* 429.

A master is not liable in trespass for the wilful act of his servant, as by driving his master's carriage against another, done without the direction or assent of the master. But he is liable to answer for any damage arising to another from the negligence or unskilfulness of his servant acting in his employ. *M'Manus* v. *Crickett.* 1 *East*, 106.

If a servant driving a carriage, in order to effect some purpose of his own, wantonly strike the horses of another person, and produce an accident, the master will not be liable. But if, in order to perform his master's orders, he strikes, but injudiciously, and in order to extricate himself from a difficulty, that will be negligent and careless conduct, for which the master will be liable, being an act done in pursuance of the servant's employment. *Croft* v. *Alison.* — 4 *B.* & *A.* 590.

§ XXV. Enticing away a Servant.

The remedy now pursued for retaining a servant in the service of another is an action by the old master against the new one, and the servant, or either of them, for damages; but in order to entitle a man to the action, it is as necessary now as when stat. 35 *Ed.* 3. *st.* 1. *c.* 1. (repealed by stat. 5 *Eliz. c.* 4.) was in force, that the new master should know of the servant's engagement with the other at the time of his retaining him, or that he should afterwards refuse to restore him upon information or demand. *Fawcet* v. *Beavres et ux.* 2 *Lev.* 63.

The retaining another person's servant during the time he has agreed to serve his present master, as it is an ungentlemanlike, so it is also an illegal act. For every master has by his contract purchased for a valuable consideration the service of his domestic for a limited time; the inveigling or hiring his servant, which induces a breach of this contract, is therefore an injury to the master; and for that injury the law has given him a remedy by a special action on the case: and he may also have an action against the servant for the non-performance of his agreement. 3 *Blac. Com.* 142.

And an action will lie for receiving or continuing to employ the servant of another after notice, without enticing him away. Therefore, where no fault could be imputed to the defendant for taking the party into his service in the first instance, because then he had no notice of such party's prior engagement, yet as soon as he had notice of that fact he ought to have discharged him. A person who contracts with another to do certain work for him is the servant of that other till the work is finished, and no other person can employ such servant to the prejudice of the first master; the very act of giving him employment is affording him the means of keeping out of his former service. *Blake* v. *Lanyon*, 6 *T. R.* 221.

Trespass on the case lies by a master for seducing his journeyman.

Hart v. *Aldridge*, *Lofft*, 493. 1 *Cowp.* 54. *S. C.* On a special verdict, the jury found that the plaintiff, being a shoemaker, employed a journeyman to make up shoes for him, and retained him by the piece, but not for any certain time. This man being hired by another, and leaving his service, the work being unfinished, the shoemaker brought his action against the person so hiring him for enticing his servant out of his service. The question was whether this person be a *servant* of the plaintiff, so that he may maintain an action and recover damages on his being enticed from his service; and whether there be sufficient upon the verdict to entitle the plaintiff to recover. Ld. *Mansfield* C. J. asked, how they defined the word *journeyman?* It was answered, that they apprehended it to mean no more than a man who was out of his time, and was not master. Ld. *Mansfield* said farther, Doth not a journeyman imply the particular relation of *servant* to the man? It is apparently a *service*. The jury have found expressly that he was *hired* by the piece: and this is a sufficient retainer. *Journeyman*, in the original etymology, is a servant for the *day*; in whose service the master hath certainly an interest. Many servants are taken to work by the piece; if otherwise they would often be idle. This case lies upon the circumstance of his being found a *journeyman*; otherwise it might have been that the master took any who pleased to work for him, to stay as long as he pleased, and

go when he pleased. And *Aston* J. said, Every man is entitled to an action who hath sustained damages by wrong: Therefore if a servant be retained for any special work, and departs from this unfinished, an action will lie against any who seduces him to depart. And the seducer or enticer is much the greater offender. *Judgment for the plaintiff.* Judgment for the plaintiff.

§ XXVI. Combinations amongst Masters or Workmen.

[3 G.4. c.114. — 5 G.4. c.95. c.96.]

By stat. 5 *G*.4. *c*.95. § 1. The stat. 39 & 40 *G*.3. *c*.106. excepting as much thereof as relates to the adjustment of disputes between masters and workmen, as therein mentioned, is repealed; except in as far as the same may have repealed any prior act of parliament. 5 G.4. c.95. repealing certain parts of 39 & 40 G.3. c.106.

By stat. 5 *G*.4. *c*.96. § 1. The statutes 39 & 40 *G*.3. c.106. and 41 *G*.3. (U. K.) *c*.38. (which amended stat. 39 & 40 *G*.3. *c*.106.) are repealed, save and except so far as the same may have repealed any prior act or enactment. 5 G.4. c.96. repealing 39 & 40 G.3. c.106. and 41 G.3. (U.K.) c.38.

By stat. 5 *G*.4. *c*.95. (*a*) reciting whereas it is expedient that the laws relative to the combination of workmen, and to fixing the wages of labour, should be repealed; that certain combinations of masters and workmen should be exempted from punishment; and that the attempt to deter workmen from work should be punished in a summary manner; it is enacted, that from and after the passing of this act, (*viz.* 21st June 1824,) so much of stat. 33 *Ed*. 1. *st*. 2. intituled "*Who be conspirators and who be champertors*," as relates to combinations or conspiracies of workmen or other persons to obtain an advance or to fix the rate of wages, or to lessen or alter the hours or duration of the time of working, or to decrease the quantity of work, or to regulate or controul the mode of carrying on any manufacture, trade, or business, or the management thereof, and as relates to combinations or conspiracies of masters, manufacturers, or other persons, to lower or fix the rate of wages, or to increase or alter the hours or duration of the time of working, or to increase the quantity of work, or to regulate or controul the mode of carrying on any manufacture, trade, or business, or the management thereof, or to oblige workmen to enter into work; and also stat. 3 *H*. 6. *c*. 1. intituled, "*Masons shall not confederate themselves in chapiters and assemblies;*" also stats. 2 & 3 *Ed*. 6. *c*. 15. intituled, "*The bill of conspiracies of victuallers and craftsmen;*" "*Of the fees of craftsmen, and the price of their worke;*" also so much of stat. 13 & 14 *C*. 2. *c*. 15. intituled, "*An act for regulating the trade of silk throwing*," as provides and enacts, that the corporation of silk throwers should not, by virtue of that act, nor any thing therein contained, make any orders, ordinances, or 5 G.4. c.95. 3 H.6. c.1. 2 & 3 Ed.6. c.15. 13 & 14 C.2. c.15. in part.

(*a*) Intituled "An Act to repeal the laws relative to the combination of workmen; and for other purposes therein mentioned," dated 21st *June*, 1824. — Acts of 33 *H*.8. (*Ir.*) 5 Parl. *J*.1. (*Sc.*) 2 acts of 5 Parl. *J*.1. (*Sc.*) 7 Parl. *J*.1. (*Sc.*) 5 Parl. *Mar.* (*Sc.*) 3 *G*.2. (*Ir.*) in part; 17 *G*.2. (*Ir.*) in part; two acts of 3 *G*.3. (*Ir.*) in part; two acts of 11 & 12 *G*.3. (*Ir.*) in part; three acts of 19 & 20 *G*.3. (*Ir.*) in part; and 25 *G*.3. (*Ir.*) in part; are also repealed by stat. 5 *G*.4. *c*.95. § 1.

5 G.4. c.95. bye laws, to set any rates or prices whatsoever upon the throwing of silk, to bind or enforce their members to work at (*viz.* § 10.) 7 G.1. st.1. c.13. in part. also stat. 7 *G.* 1. *st.* 1. c. 13. intituled, "*An act for regulating the journeymen tailors within the weekly bills of mortality*," excepting so much thereof as relates to the recovery of wages, or to journeymen tailors or servants departing from their service, or refusing to enter into work or employment as therein mentioned (*viz.* § 6 and 12 G.1. c.34. in part. § 9.) also stat. 12 *G.* 1. *c.* 34. § 1. and so much of § 8. as extends the provision in § 1. to the persons therein mentioned: also so 22 G.2. c.27. much of stat. 22 *G.* 2. *c.* 27. as extends § 1. and § 8. of stat. 12 *G.* 1. *c.* 34., first recited, to the persons therein mentioned: also so much 29 G.2. c.33. of stat. 29 *G.* 2. *c.* 33., as relates to making of rates for the payment of wages continuing, and altering, and notifying them as therein mentioned, (*viz.* § 12.)

8 G.3. c.17. Also stat. 8 *G.* 3 *c.* 17. intituled "*An act to amend stat.* 7 G 1. st.1. c. 13.," intituled, "*An act for regulating the journeyman tailors within the weekly bills of mortality*;" also so much of stat. 13 G.3. c.68. in part. 13 *G.* 3. *c.* 68. intituled, "*An act to empower the magistrates therein mentioned to settle and regulate the wages of persons employed in the silk manufacture within their respective jurisdictions*," as relates to settling, regulating, ordering and declaring the wages and prices of work, and the notification thereof, and makes it an offence to deviate from such settlement, regulation, order, and declaration, or to ask, receive, or to take more or less wages or larger or less prices than shall be so settled, or to enter into combinations, or for that purpose to decoy or solicit, or to assemble, as therein mentioned, and as relates to the detection of such offences, and as makes it an offence to retain or employ journeymen weavers, or to give, allow, or pay, or cause to be given, allowed, or paid, more or less wages than shall be settled, as therein mentioned; *viz* § 1 — 5. 17 G.3. c.55. in part. also so much of stat. 17 *G.* 3. *c.* 55., intituled, "*An act for the better regulating the hat manufactory*," as relates to the keeping up, acting in, making, entering into, signing, sealing, or being knowingly concerned in the contracts, covenants, or agreements, bye laws, ordinances, rules, or orders of the clubs, societies, or combinations therein mentioned, or the presuming or attempting to put the agreements, bye laws, ordinances, rules, or orders in execution, or to the attending meetings, clubs, societies, or combinations, or to the summoning, giving notice to or calling upon, collecting, demanding, or receiving, persuading, enticing, or inveigling or endeavouring to persuade, entice, or inveigle, paying money, making or entering into subscriptions or contributions, as therein mentioned, (*viz.* part of § 3. and all § 4.); also so much 32 G.3. c.44. of stat. 32 *G.* 3. *c.* 44. *viz.* § 1. as extends the provisions of stat. 13 *G.* 3. *c.* 68., hereby repealed, (*viz.* § 1 — 5.) to journeymen weavers in manufacture of silk, mixed with other materials; also stat. 36 G.3. c.111. 36 *G.* 3. *c.* 111., intituled, "*An act to prevent unlawful combinations of workmen employed in the paper manufactory*;" also part of stat. 39 & 40 G.3. c.106. in part. 39 & 40 *G.* 3. *c.* 106. (which is *entirely* repealed by stat. 5 *G.* 4. *c.* 96. § 1.) also so much of stat. 57 *G.* 3. *c.* 122. as extends such of 57 G.3. c.122. the provisions of the said acts as are hereby repealed to *Scotland* And all acts relative to combinations of workmen, or of masters, as to and *Ireland*, together with all other laws, statutes, and enactments now in force throughout or in any part of the U. K. relative to combinations to obtain an advance of wages, or to lessen or alter the hours or duration of the time of working, or to decrease the

5 G.4. c.95.

quantity of work, or to regulate or controul the mode of carrying on any manufacture, trade, or business, or the management thereof; relative also to combinations to lower the rate of wages, or to increase or alter the hours or duration of the time of working, or to increase the quantity of work, or to regulate or controul the mode of carrying on any manufacture, trade, or business, or the management thereof; relative also to fixing the amount of the wages of labour; relative also to obliging workmen not hired to enter into work; together with every other act and enactment enforcing or extending the application of any of the acts or enactments repealed by this act, shall be and the same are hereby repealed, save and except in as far as the same may have repealed any prior act, or enactment.

wages, time of working, or quantity of work, &c. repealed.

§ 2. Enacts, "that journeymen, workmen, or other persons who shall enter into any combination to obtain an advance or to fix the rate of wages, or to lessen or alter the hours or duration of the time of working, or to decrease the quantity of work, or to induce another to depart from his service before the end of the time or term for which he is hired, or to quit or return his work before the same shall be finished, or not being hired, to refuse to enter into work or employment, or to regulate the mode of carrying on any manufacture, trade or business, or the management thereof, shall not therefore be subject or liable to any indictment or prosecution for conspiracy, or to any other criminal information or punishment whatever, under the common or the statute law."

Workmen exempted from punishment for combining to raise their wages, alter the time of working, or quantity of work.

And by § 3. "Masters, employers, or other persons, who shall enter into any combination to lower or to fix the rate of wages, or to increase or alter the hours or duration of the time of working, or to increase the quantity of work, or to regulate the mode of carrying on any manufacture, trade or business, or the management thereof, shall not therefore be subject or liable to any indictment or prosecution or for conspiracy, or to any other criminal information or punishment whatever, under the common or statute law."

Masters exempted from punishment for combining to depress wages, alter the time of working, or quantity of work.

By § 4. It is enacted, that "all penal proceedings for any act or omission against any enactment hereby repealed, and not made punishable by the provisions of this act, or for any act or omission hereby exempted from punishment, shall become null and void; and that no penal proceedings for any act or omission against any enactment hereby repealed, and not made punishable by the provisions of this act, or for any act or omission hereby exempted from punishment, shall be instituted against any one in relation to any such offence already incurred; provided that no person shall be subjected to loss or liability for any thing already done, touching any act or omission, the penal proceedings against which are hereby made null and void, or shall lose any privilege or protection to which the enactments hereby repealed entitle him."

Penal proceedings under any act hereby repealed, void.

By § 5. "If any person, by violence to the person, or property, by threats or by intimidation, shall wilfully or maliciously force another to depart from his hiring or work before the end of the time or term for which he is hired, or return his work before the same shall be finished, or damnify, spoil, or destroy any machinery, tools, goods, wares or work, or prevent any person not being hired from accepting any work or employment; or if any person shall wilfully or maliciously use or employ violence to the person or property, threats or intimidation towards another, on account of

Punishment for forcing workmen, by violence, threats, or intimidation, to leave their service, quit or spoil their work, or refuse to enter upon work, and

5 G.4. c.95.

for using violence, threats, or intimidation towards another for not assenting to combinations of workmen.

his not complying with or conforming to any rules, orders, resolutions, or regulations made to obtain an advance of wages, or to lessen or alter the hours of working, or to decrease the quantity of work, or to regulate the mode of carrying on any manufacture, trade, or business, or the management thereof; or if any person, by violence to the person or property, by threats or intimidation, shall wilfully or maliciously force any master or mistress manufacturer, his or her foreman or agent, to make any alteration in their mode of regulating, managing, conducting, or carrying on their manufacture, trade or business; every person so offending, or causing, procuring, aiding, abetting, or assisting in such offence, being convicted thereof in manner hereafter mentioned, shall be imprisoned only, or imprisoned and kept to hard labour, for any time not exceeding 2 calendar months."

Punishment for combining to effect such purposes.

By §6. "If any person shall combine, and by violence to the person or property, or by threats or intimidation, wilfully and maliciously force another to depart from his service before the end of the time or term for which he or she is hired, or return his or her work before the same shall be finished, or damnify, spoil, or destroy any machinery, tools, goods, wares, or work, or prevent any person not being hired from accepting any work or employment; or if any persons so combined shall wilfully or maliciously use or employ violence to the person or property, or threats or intimidation towards another, on account of his or her not complying with or comforming to any rules, orders, resolutions, or regulations made to obtain an advance of wages, or to lessen or alter the hours of working, or to decrease the quantity of work, or to regulate the mode of carrying on any manufacture, trade, or business, or the management thereof; or if any persons shall combine, and by violence to the person or property, or by threats or intimidation, wilfully or maliciously force any master or mistress manufacturer, his or her foreman or agent, to make any alteration in their mode of regulating, managing, conducting or carrying on their manufacture, trade, or business; each and every person so offending, or causing, procuring, aiding, abetting, or assisting in such offence, being convicted thereof in manner hereinafter mentioned, shall be imprisoned only, or imprisoned and kept to hard labour, for any time not exceeding two calendar months: Provided always that nothing herein contained shall alter or affect any law now in force for the prosecution and punishment of the said several offences; only that a conviction under this act for any such offence * shall exempt the offender from prosecution under any other law or statute."

But not to affect any law now in force for the punishment of such offences; only a conviction under this act shall exempt from prosecution under any other law.

* (*Sic.*)

Summary conviction before two justices for offences against this act.

And by §7. "For the more effectual prosecution of offenders against this act, it is enacted, that on complaint and information on oath before any one or more justice or justices of the peace, of any offence having been committed against this act within his or their respective jurisdictions, such justice or justices are hereby authorised and required to summon the person or persons charged with any such offence against this act to appear before any two justices at a certain time and place to be specified, such place to be as near to the place where cause of such complaint shall have arisen as may be; and if any person or persons so summoned shall not appear according to such summons, then such justices (proof on oath having been first made before them or him of the due service of such summons upon such person or persons, by delivering the same to him or her personally, or leaving the same at his or her

usual place of abode, provided the same shall be so left 24 hours at the least before the time which shall be appointed to attend the said justices upon such summons) shall make and issue their or his warrants or warrant for apprehending the person or persons so summoned and not appearing as aforesaid, and bringing him or her before such justices; or it shall be lawful for such justices, if they shall think fit, without issuing any previous summons, and instead of issuing the same upon such complaint and information upon oath as aforesaid, to make and issue their warrant or warrants for apprehending the person or persons by such information charged to have offended against this act, and bringing him or her before such justices; such justices shall forthwith make enquiry touching the matters complained of, and examine into the same, and hear and determine the matter of every such complaint; and upon confession by the party, or proof by two or more credible witnesses upon oath, (which oath such justice or justices are hereby authorised to administer,) to convict or acquit the party against whom complaint shall have been made as aforesaid; such conviction, and the commitment thereon, to be in the form (Q) or to the effect of the form in the schedule to this act annexed." *5 G.4. c.95.* Q

No justice being a master manufacturer, &c. shall act.

By § 8. "No justice of the peace, being also a master, or the father or son of any master, in any trade or manufacture, shall act as such justice under this act."

Witnesses may be summoned, and on refusing to appear, or appearing, to be examined, may be committed.

By § 9. "It shall be lawful for the justice or justices of the peace before whom any such complaint and information shall be made as aforesaid, and he and they are hereby authorised and required, at the request in writing of any of the parties, to issue his or their summons to any witness or witnesses to appear and give evidence before such justices at the time and place appointed for hearing and determining such complaint, and which time and place shall be specified in such summons; and if any person so summoned to appear as a witness as aforesaid shall not appear before such justices at the time and place specified in such summons, or offer some reasonable excuse for the default, or appearing according to such summons shall not submit to be examined as a witness, and give his evidence before such justices touching the matter of such complaint, then and in every such case it shall be lawful for such justices, and they are hereby authorised (proof on oath, in the case of any person not appearing according to such summons, having been first made before such justice or justices, of the due service of such summons on every such person, by delivering the same to him, or by leaving the same twenty-four hours before the time appointed for such person to appear before such justices, at the usual place of abode of such person) by warrant under the hands of such justices, in the form and to the effect of the form in the schedule to this act annexed (R), to commit such person so making default in appearing, or appearing and refusing to give evidence, to some prison within the jurisdiction of such justices, there to remain without bail or mainprize for any time not exceeding two calendar months, or until such person shall submit himself or herself to be examined, and give his or her evidence before such justices as aforesaid: Provided always, that in case such complaint shall be heard and determined before such offender shall submit to be examined and give evidence as aforesaid, then and in every such case he, she or they shall be imprisoned the full term of such commitment." R

5 G.4. c.95. Offenders obliged to give evidence for the crown, but indemnified.

By § 10. "Any person offending against this act shall be compellable to give his testimony as a witness on behalf of the crown, prosecutor or informer, upon any information under this act against any other person not being such witness; but every person having given his testimony as aforesaid shall be indemnified from any information or prosecution for having offended in the matter wherein or relative to which he shall so have given his testimony."

Forms of convictions and commitments.

By § 11. "The justices before whom any person shall be convicted of any offence against this act, or by whom any person shall be committed to prison for not appearing as a witness, or not submitting to be examined, shall cause all such convictions, and the warrants or orders for such commitments, to be drawn up in the form (Q) or to the effect set forth in the schedule to this act annexed."

(Q)

No appeal allowed.

By § 12. "No appeals shall be allowed against any conviction under this act."

Limitation of actions.

By § 13. "No action shall be brought against any person for any matter or thing whatsoever done or committed under or by virtue or in the execution of this act, unless such action shall be brought within 6 calendar months next after the doing or committing of such matter or thing."

Persons sued for any thing done under this act, may plead the general issue; costs to defendant on judgment for him.

By § 14. If any action shall be brought against any person for any thing done under, by virtue, or in the execution of this act, such person may plead the general issue, and give this act and the special matter in evidence; and if the plaintiff shall become nonsuited, or suffer discontinuance, or forbear further prosecution, or if judgment shall be given for the defendant, such defendant shall recover his full costs, for which he shall have like remedy as in cases where costs by law are given to defendants.

3 G.4. c.114. Assault in pursuance of any conspiracy to raise wages.

By stat. 3 *G.*4. *c.* 114. In case of any assault committed in pursuance of any conspiracy to raise the rate of wages, it shall be lawful for the court before which the offender shall be convicted, or which by law is authorised to pass sentence on any such offender, to award, and order (if such court shall think fit,) sentence of imprisonment with hard labour, for any term not exceeding the term for which such court may now imprison for such offences, either in addition to, or in lieu of any other punishment which may be inflicted on any such offenders by any law in force before the passing of this act (5th *August* 1822) and every such offender shall thereupon suffer such sentence, in such place, and for such time as aforesaid as such court shall think fit to direct.

§ XXVII. Arbitration between Masters and Workmen.

[5 G.4. c.96.]

5 G.4. c.96.

By stat. 5 *G.* 4. *c.* 96. § 1. (*a*) After reciting that it is expedient that the laws relative to the arbitration of disputes between masters and workmen should be consolidated and amended, and one general law made applicable to every description of trade and manufacture; it is enacted, that stats. 39 & 40 *G.*3. *c.*90. *c.*106., 41 *G.*3. U.K. *c.*38., and 44 *G.*3. *c.*87. shall be and are repealed, save and except in as far as the same may have repealed any prior acts or enactments.

(*a*) Intituled, "An act to consolidate and amend the laws relative to the arbitration of disputes between masters and workmen," dated 21st *June*, 1824. Stat. 3 *G.*2. (*Ir.*) is repealed in part by § 1.

§ 2. Enacts, that the following subjects of dispute arising between masters and workmen, or between workmen and those employed by them, in any trade or manufacture in any part of the U. K., may be settled and adjusted in manner hereafter mentioned; that is to say, Disagreements respecting the price to be paid for work done, or in the course of being done, whether such disputes shall happen or arise between them respecting the payment of wages as agreed upon, or the hours of work as agreed upon, or any injury or damage done or alleged to have been done to the work, or respecting any delay or supposed delay in finishing the work, or the not finishing the work in a good and workmanlike manner, or according to any contract, or * to bad materials; Cases where the workmen are to be employed to work any new pattern which shall require them to purchase any new implements of manufacture, or to make any alteration upon the old implements for the working thereof, and the masters and workmen cannot agree upon the compensation to be made to such workmen for in or respect thereof; Disputes respecting the length, breadth, or quality of pieces of goods, or, in the case of cotton manufacture, the yarn thereof, or the quantity and quality of the wool thereof; Disputes respecting the wages or compensation to be paid for pieces of goods that are made of any great or extraordinary length; Disputes in the cotton manufacture respecting the manufacture of cravats, shawls, policat, romal, and other handkerchiefs, and the number to be contained in one piece of such handkerchiefs; Disputes arising out of, for, or touching the particular trade or manufacture, or contracts relative thereto, which cannot be otherwise mutually adjusted and settled; Disputes between masters and persons engaged in sizing or ornamenting goods; but nothing in this act contained shall authorise any justice or justices acting as hereinafter mentioned to establish a rate of wages or price of labour or workmanship at which the workmen shall in future be paid, unless with the mutual consent of both master and workmen: Provided always, that all complaints by any workman as to bad materials shall be made within three weeks of his receiving the same; and all complaints arising from any other cause shall be made within 6 days after such cause of complaint shall arise.

5 G. 4. c. 96. Enumeration of the causes of dispute that may be referred.

* *Sic.*

Future rate of wages not to be fixed; Exception.

Limitation of time for workmen to lodge their complaints.

By § 3. It is enacted, that whenever such subjects of dispute shall arise as aforesaid, it shall be lawful for the master and workman, or either of them, to demand and have an arbitration or reference thereof in manner following; that is to say, where the party complaining and the party complained of shall come before or agree by any writing under their hands to abide by the determination of any justice of the peace or magistrate of any county, riding, division, stewartry, barony, city, burgh, town, or place, within which the parties reside, it shall be lawful for such justice, &c. to hear and finally determine, in a summary manner, the matter in dispute between such parties; but if such parties shall not come before or so agree to abide by the determination of such justice, &c., then it shall be lawful for any such justice, &c., and such justice, &c. is hereby required, on complaint made before him, and proof by the examination of the party making such complaint, that application has been made to the person or persons against whom such cause of complain has arisen, (or his, her, or their agent or agents, if such dispute has arisen with such agent or agents,) to settle such

Appointment of referees.

5 G.4. c.96. dispute, and that the same has not been settled upon such complaint being made, or where the dispute relates to a bad warp, that such cause of complaint has not been done away within 48 hours after such application, to summon before him such person or persons, or agent or agents, on some day not exceeding 3 days, exclusive of *Sunday*, after the making such complaint, giving notice to the person making such complaint of the time and place appointed in such summons for the attendance of such person or persons, agent or agents, as aforesaid; and if at such time and place the person or persons so summoned shall not appear by himself, herself, or themselves, or send some person on his, her, or their behalf, to settle such dispute, or appearing shall not do away such cause of complaint, then and in such case it shall be lawful for such justice, and he is hereby required, at the request of either of such parties, to nominate arbitrators or referees for settling the matters in dispute; and such justice shall then and there at such meeting propose not less than 4 nor more than 6 persons, one half of whom shall be master manufacturers, or agents or foremen of some master manufacturer, and the other half of whom shall be workmen in such manufacture; such respective persons residing in or near to the place where such disputes shall have arisen; out of which master manufacturers, agents, or foremen, the master engaged in such dispute, or his agent, shall choose one, and out of which workmen so proposed, the workman or his agent shall choose another, who shall have full power to hear and finally determine such dispute.

Appointment of other referees where those appointed refuse or delay to accept the reference, or accepting, do not act therein.

§ 4. Enacts, that in case any or either of the persons so proposed by any such justice shall refuse or delay to accept such arbitration, or accepting shall not act therein, within 2 days after such nomination, the justice shall proceed to name another or other persons of the descriptions aforesaid, in the room of the person so refusing as aforesaid to be arbitrator or arbitrators in the place of any such arbitrator or arbitrators so refusing or delaying to accept, or who shall not act; and in every case of a second nomination the arbitrators shall meet within 24 hours after the application for the same, and at the same place at which the meeting of the referees first named was appointed, or at some other convenient place, as the justice may appoint; and the expence of every such application for the appointment of a second referee shall be borne and defrayed by the party through whose default, or the default of whose referee, such application is rendered necessary; and the justice making such second appointment shall certify the same in the form for that purpose hereafter set forth, or in some other form to the like effect; and in every case where a second arbitrator shall be appointed as aforesaid, and shall not attend at the same time and place appointed for settling the matters in dispute, it shall be lawful for the other arbitrator, at such time and place, to proceed by himself to the hearing and determining of the same matters in dispute; and in such case the award of such sole arbitrator shall be final and conclusive as to all matters in dispute, submitted to such arbitrator, without being subject to review, appeal, or suspension.

Meeting of referees, notice of which shall be given.

§ 5. Enacts, that the arbitrators or referees being so nominated as aforesaid, the said justice shall thereupon appoint a place of meeting according to the directions of this act, and also a day for the meeting, notice of which nomination, and of the day of meeting, shall thereupon be given by such justice to the persons so nominated arbitrators or referees, and to any party to any such dispute, who may not

have attended the meeting before such justice as aforesaid; which appointment shall be by such justice certified in the form following, or in some other form to the like effect; that is to say, 5 G.4. c.96.

Form of justice's order, certifying nomination of referees.

I A. B., *one of the justices of the peace acting for* ———, *do hereby certify, that* C. D. *and* E. F. *are duly nominated referees to settle the matters in difference between* G. H. *of* ———, *master manufacturer,* [or *agent* or *foreman,* as the case may be,] *and* I. K. *of* ———, *weaver,* [or otherwise, as the case may be,] *pursuant to an act passed in the fifth year of the reign of his present majesty; and that the said referees are hereby directed to meet at* ———, *on* ———, *the* ——— *day of* ———, *at* ——— *of the clock in the forenoon* [or *afternoon,* as the case may be]. A. B.

I A. B., *one of the justices of the peace acting for* ———, *do hereby certify, that the above-named* C. D. *and* E. F. [or *one of them,* as the case may be,] *having refused or delayed to act in the above-mentioned reference,* L. M. *and* N. O. [or L. M. *only,* as the case may be,] *are* [or *is*] *by me duly nominated referees* [or *referee*], *together with the above-named* C. D. [or E. F.] *to settle the matters in difference between the above named* G. H. *and* I. K.; *and the said* C. D. *or* E. F., *together with the said* L. M., [or *the said* L. M. *or* N. O., as the case may be,] *are directed to meet at the place above mentioned, on* ———, *the* ——— *day of* ———, *in the year of our lord* ———, *at* ——— *of the clock in the forenoon* [or *afternoon,* as the case may be]. A. B.

And the persons so appointed as aforesaid shall hear and examine the parties and their witnesses, and determine such dispute within 2 days after such nomination, exclusive of *Sundays;* and the determination of such arbitrators shall be final and conclusive. [*See* Form of Award (S).] S

Place for the meeting of referees.

By § 6. In all cases where complaints are made respecting bad warps or utensils by workmen, the place of meeting of the referees shall be at or as near as may be to the place where the work shall be carrying on; and in all other cases at or as near as may be to the place or places where the work has been given out.

Attendance of parties.

§ 7. Provides, that if any person so complaining as aforesaid shall not attend, or send some person on his or her behalf, at the time and place appointed by such justice of the peace, for the purpose of naming such persons as aforesaid, such person shall not in such case be entitled to the benefit of this act; and if any person against whom any such complaint shall have been made as aforesaid shall not attend, or send some person on his or her behalf, the justice of the peace shall thereupon nominate a person for him out of such persons so proposed as aforesaid.

Investigation of the complaint.

By § 8. The said arbitrators and referees shall meet at the time and place fixed by the justice of the peace by whom such referees were appointed, and shall, by inspection of the work in regard to which the dispute may have arisen, by hearing and examining the parties, or any other persons on their behalf, or that attend to give evidence respecting the matters in dispute, upon oath, (which (V) the said arbitrators and referees are hereby empowered to administer,) or otherwise, or by otherwise ascertaining the true state of the case, in such manner as to them shall V

5 G.4. c.96.

appear necessary, proceed to determine the matter or matters in dispute referred to them; and the award to be made by them shall be final and conclusive between the parties, without being subject to review or challenge by any court or authority whatsoever.

Arrest and commitment of refractory witnesses.

§ 9. Enacts, that it shall be lawful for any arbitrator or arbitrators, referee or referees, and he or they are hereby authorised and required at the request in writing of any of the parties to issue his or their summons to any witness or witnesses to appear and give evidence before such arbitrator or arbitrators, referee or referees, at the time and place appointed for hearing and determining any such dispute, and which time and place shall be specified in such summons; and if any person so summoned to appear as a witness as aforesaid shall not appear before such arbitrator or arbitrators, referee or referees, at the time and place specified in such summons, or offer some reasonable excuse for the default, or appearing according to such summons, shall not submit to be examined as a witness, and give his evidence before such arbitrator or arbitrators, referee or referees, touching the matter of such dispute, in every such case it shall be lawful for any one or more of H. M.'s justices of the peace acting in and for the county, stewartry, riding, division, barony, city, burgh, town, or place, where such dispute shall have arisen, (proof on oath in the case of any person not appearing according to such summons having been first made before such justice or justices of the due service of such summons on every such person by delivering the same to him, or by leaving the same 24 hours before the time appointed for such person to appear before such arbitrator or arbitrators, referee or referees, at the usual place of abode of such person,) by warrant under the hands of any such justice or justices
W to commit (W) (and see § 27.) any such person so making default in appearing, or appearing and refusing to give evidence, to some prison within the jurisdiction of any such justice or justices, there to remain, without bail or mainprize, for any time not exceeding 2 calendar months, nor less than 7 days, or until such person shall submit himself to be examined, and give his evidence before such arbitrator or arbitrators, referee or referees, as aforesaid: provided always, that in case such dispute shall be heard and determined before such offender shall submit to be examined, and give evidence as aforesaid, then and in every such case he, she, or they shall be imprisoned the full term of such commitment.

Adjournment of the complaint from the referees to a justice.

By § 10. In case such arbitrators and referees so appointed cannot agree upon and decide such matter or matters in dispute so referred as aforesaid, or shall not make and sign their award within 3 days after the date of the order of such justice, certifying their appointment, then they shall, without delay, go before the justice by whom they were appointed, and in case of his absence or indisposition, before any other of H. M.'s justices of the peace acting in and for the county, stewartry, riding, division, barony, city, burgh, town, liberty, or place, and residing nearest to the place where the meeting to settle such dispute shall have taken place, and shall state to such justice or justices who may be present the points in difference between them, which points in difference the said justice or justices shall hear and determine

upon the statement of the arbitrators and referees; and shall settle and determine the matter in dispute with all possible dispatch, and in all cases within the space of 2 days after the expiration of the time hereby allowed to the arbitrators and referees to make and sign their award; and the determination of such justice or justices shall be final and conclusive between the parties so differing as aforesaid, without being subject to review or challenge by any court whatsoever. 5 G. 4. c. 96.

By § 11. If either arbitrator or referee shall neglect or refuse to go before such justice of the peace in the manner herein directed, it shall be lawful for such justice, after summoning the arbitrators to attend him, to determine the matter or matters in dispute upon the statement and representation of either of the arbitrators who shall come before him. § 12. Provided always, that no justice of the peace, being also a master manufacturer or agent, shall act as such justice under this act.

Proceeding where one referee refuses to go before the justice.

Manufacturer not to act as justice.

By § 13. It is provided, that as well in all such cases of dispute as aforesaid as in all other cases, if the parties mutually agree that the matter in dispute shall be arbitrated and determined in a different mode to the one hereby prescribed, such agreement shall be valid, and the award and determination thereon final and conclusive between the parties, and the same proceedings of distress, sale, and imprisonment, as hereafter mentioned, shall be had towards enforcing such award, (by application to any justice of the peace of the county, stewartry, riding, division, barony, city, town, burgh, or place within which the parties shall reside,) as are by this act prescribed for enforcing awards made under and by virtue of its provisions.

Disputes may be adjusted by any other mode of arbitration upon which the parties may agree.

By § 14. It is enacted, that where any work shall have been delivered to any workman by the agent or servant of any master or masters, to be when finished delivered to such agent or servant; and also where 2 or more persons shall carry on the business of such manufacture as partners, in every such case respectively the like proceedings shall and may be had and made against such agent, &c. and shall be as effectual as if the same had been had and made against the principal, or all the partners; and all the said persons respectively shall obey the award made thereupon, and all such order or orders as shall be made by the said justice or justices in or respecting the matters in dispute, and shall be subject to the same proceedings and consequences for refusing or delaying to abide by or perform the same, as if the proceedings had been had against the principal, or against all the partners.

Partners, agents, and servants of masters, to be considered principals.

§ 15. It shall be lawful in all cases for any master or workman, by writing under his hand, to authorise any person to act for him in submitting to arbitration and attending arbitrators or justices touching the matter of any arbitration.

Masters not resident on the spot may depute another person to act for them.

By § 16. In all cases where any proceedings may be had against a master or masters under this act, or where such proceedings shall have been commenced, and the master or masters shall become or be bankrupt, or any assignment of his or their estate or effects shall have been made under the said bankruptcy, or otherwise by deed or in law, the factor or trustee upon, or the assignee or assignees of such estate or effects shall be liable to the proceedings authorised by this act against the master or masters,

Provision for the case of the master becoming bankrupt after proceedings commenced.

5 G.4. c.96. as fully as the master or masters was or were before the bankruptcy or assignment; and such proceedings may be commenced or carried on against such factor, trustee, assignee, or assignees, who shall fulfil and abide by the award made thereupon, and all such order or orders as shall be made by the said justice or justices in or respecting the matters in dispute, and shall be subject to the same proceedings and consequences for wilfully refusing or delaying to abide by or perform the same, as if the proceedings had been had against the master or masters before his or their bankruptcy, or the assignment of his or their estate or effects: provided that all sums of money to be paid in pursuance of such award or orders shall be recoverable only out of the estate or effects of such master or masters, and not out of the proper money of such factor, trustee, assignee, or assignees.

In whose name proceedings shall be, where the complainant is a married woman or infant.

By § 17. It is enacted, that where any married woman, or infant under the age of 21 years, shall have cause of complaint in any of the cases provided for by this act, against any master or masters, his or their agent or servant, or factor or trustee, or assignee or assignees as aforesaid, such complaint may be lodged, and all further proceedings thereupon had, by and in the name of the husband of such married woman, and of the father, or, if dead, of the mother, or if on the death of both parents, of any of the kindred of any such infant, or of the surety or sureties in any indenture of apprenticeship of any such infant, being an apprentice, or of any person nominated by such infant, if he or she shall not have parent, kindred, or surety; and all such proceedings shall be as effectual, valid, and binding, as if such married woman was sole, and such infants were of full age, and pursued by themselves the remedies provided by this act.

Tickets of particulars shall be given out with the work.

By § 18. With every piece of work given out by the manufacturer to a workman to be done, there shall (if both parties are agreed) be delivered a note or ticket, in such form as the said parties shall mutually agree upon; and which said note or ticket, in the event of dispute between the manufacturer and workman, shall be evidence of all matters and things mentioned therein or respecting the same.

Duplicates of such tickets.

By § 19. A duplicate of every such note or ticket shall be made and kept by the master or agent delivering the same, which duplicate shall be evidence of all the matters therein contained, in case the workman shall not produce to the arbitrators, or the said justice, as the case may be, the said note or ticket so delivered to him with the said work.

Manufacturers receiving articles without objection not to complain afterwards.

By § 20. It shall not be allowable to any manufacturer, who shall have received into his possession any article without objection made within 24 hours by himself, or his clerk or foreman, afterwards to make any complaint on account of work so received.

Extension of the time limited for making the award.

§ 21. Enacts, that if the parties by and between whom the said reference shall take place as aforesaid shall think it expedient, or be desirous to extend the time hereby limited for the making the award or umpirage, it shall be lawful for them to extend the same accordingly by endorsement, according to the form (T) in the schedule hereunto annexed, on the back of the order of the justice of peace, certifying the appointment of the referees, to be

T

signed by both of them in the presence of one or more credible witness or witnesses. 5 G. 4. c. 96.

By § 22. The award or umpirage to be made upon any reference demanded under this act shall and may be drawn up and written at the foot or upon the back of the said order, certifying the appointment of the referees, according to the form (S) in the schedule hereunto annexed.

Form of the award in schedule annexed.
S

By § 23. Upon fulfilment of the award or umpirage, the same shall be acknowledged by the party in whose behalf the same was made, by an acknowledgment at the foot of the said award, in the form (U) of the schedule hereunto annexed, which, with the award, shall thereupon be delivered to the party fulfilling the same.

On the award being fulfilled, the fulfilment shall be acknowledged.
U

By § 24. it is enacted, that if any party shall refuse or delay to fulfil an award under this act, for the space of 2 days after the same shall have been reduced into writing, it shall be lawful for any such justice as aforesaid, on the application of the party aggrieved, by warrant under his hand according to the form (X) of the schedule hereunto annexed, or in some other form to the like effect, to cause the sum and sums of money directed to be paid by any such award to be levied by distress and sale of any goods and chattels of the person or persons liable to pay the same, together with all costs and charges attending such distress and sale, such sale to take place within such time, not exceeding five days, as the said justice shall think proper; and the overplus, if any, to arise by such sale, to be rendered to the owners of the goods and chattels distrained; and in case it shall appear by any return to such warrant that no sufficient distress can be readily had, which return may be in the form contained in the schedule hereunto annexed (Y), or in some other form to the like effect, it shall be lawful for any such justice by warrant under his hand, according to the form of the schedule hereunto annexed (Z), or in some other form to the like effect, to commit the person or persons so liable as aforesaid to the common gaol, or some house of correction within his or their jurisdiction, there to remain without bail for any time not exceeding 3 months.

The performance of the award may be enforced by distress, and
X
failing that, the party shall be imprisoned.
Y
Z

§ 25. After reciting whereas cases may occur where the recovery of such sum or sums of money by distress and sale of the goods and chattels of the defaulter may appear to the justice or justices of the peace by whom the warrant is to be issued to be attended with consequences ruinous or in an especial manner injurious to the defaulter and his family; to prevent such consequences, enacts, that the said justice or justices, in all such cases, shall withhold such warrant, and commit the defaulter to the common gaol or some house of correction within his or their jurisdiction, there to remain without bail for any time not exceeding 3 months; such commitment to be in the form (Z a) or to the effect of the form in the schedule to this act annexed.

In certain cases the warrant of distress shall be withheld, and the defaulter committed to prison.
Z a

By § 26. Where any person shall be committed to prison for refusing or delaying to fulfil an award as aforesaid, and such person shall, at any time during the period of his or her imprisonment, pay to the governor or keeper of the prison the full amount of the sum awarded, with all reasonable expences incurred through such refusal or delay, it shall be lawful for such governor

On payment of the sum awarded, with the costs and charges, the party shall be

5 G. 4. c. 96.

discharged from prison.

or keeper of such prison, and he is hereby required forthwith to discharge such person from his custody.

Warrant of commitment to be in form set forth in schedule. (W)

By § 27. The justice or justices by whom any person or persons shall be committed to prison for not appearing as a witness, or not submitting to be examined, shall cause the warrant or order for such commitment to be drawn up in the form (W) or to the effect set forth in the schedule to this act. (*See* § 9. p. 180.)

No appeal or *certiorari* shall lie.

Proceedings not invalid for want of form.

By § 28. No appeal or *certiorari* shall lie against any proceedings under this act; and by § 29. no proceedings under this act shall be invalid for want of form.

Fees to be taken for proceedings under this act.

By § 30. the following and no higher fees shall be allowed to be taken for any proceeding under this act; (that is to say,)

To the clerk of the justice or justices:

For each summons, 2*d.*; for every oath or affirmation, 3*d.*; for drawing and entering the order, 4*d.*; for every warrant, 6*d.*

To the constable or other peace officer:

For service of summons or order, 4*d.*; for executing warrant of distress and sale of goods, 1*s.*; for custody of goods distrained, *per diem*, 3*d.*; for every mile he shall travel, 3*d.*; for every caption, 6*d.*

And a table of fees, signed by the clerk to such justice or justices, shall be hung up in every place where any general or quarter session, or petty or other sessions of the peace, shall be held.

Costs, time and expences how to be settled.

By § 31. All costs, time, and expences attending the application to justices, to be made under this act, and of the arbitration pursuant thereon, shall be settled by the arbitrators or arbitrator by whom such dispute shall be settled; and where the same shall be determined by any justice, pursuant to this act, then the costs, time, and expences aforesaid shall be settled by such justice; and where the arbitrators appointed as aforesaid cannot agree as to the costs, time, and expences to be allowed, the same shall be settled by the justice or justices of the peace by whom the said arbitrators were named, and in case of his absence or indisposition, by any justice of peace for the same county, stewartry, riding, division, barony, city, burgh, liberty, town, or place nearest to the place at which the arbitrators met to settle the dispute: provided always, that no master manufacturer, his foreman, or agent, shall in any case be allowed for costs, time, or expences, by the said justice or justices, unless it shall appear to him or them that the proceedings of the workmen were vexatious and oppressive.

Proceedings exempt from stamp duty.

By § 32. Every agreement, submission, award, ticket, matter, or thing, under and by virtue of this act, or relating to any other mode of arbitration as aforesaid, shall and may be drawn up and written upon unstamped paper.

Limitation of time for suing those who act in execution of this act.

§ 33. Enacts, that no action shall be brought against any arbitrator, justice of the peace, constable, headborough, or other officer, or against any other person or persons whomsoever, for any matter or thing whatsoever done or committed under or by virtue or in the execution of this act, unless such action shall be

brought within 6 calendar months next after the doing or committing of such matter or thing. 5 G.4. c.96.

§ 34. Provides, that if any action or suit shall hereafter be commenced or prosecuted against any person or persons for any thing done under, by virtue, or in the execution of this act, such person or persons may plead the general issue, and give this act and the special matter in evidence; and if the plaintiff shall become nonsuited or suffer discontinuance, or forbear further prosecution, or if judgment shall be given for the defendant or defendants, such defendant or defendants shall recover his, her, or their full costs, and for which he, she, or they shall have like remedy as in cases where costs by law are given to defendants. **Persons sued for acting in execution of this act may plead the general issue.**

§ 35. Enacts, that nothing in this act shall extend to repeal, abridge, annul, or make void any of the clauses, provisions, remedies, or powers contained in any law or statute now in force, and not repealed by this act. **Not to repeal any act not hereby repealed.**

§ XXVIII. Payment of Wages in Bank Notes.

[Stat. 58 G.3. c.51.]

By stat. 58 *G.*3. *c.*51. § 1. After reciting that by the several stats. 4 *Ed.* 4. *c.*1., 1 *An. st.* 2. *c.* 18., 10 *An. c.* 16. (*a*), 1 *G.* 1. *c.*15. (*a*), 7 *An.c.* 13. (*a*), 12 *G.* 1. *c.*34., 13 *G.* 1. *c.*23., 13 *G.*2. *c.*8., 22 *G.*2. *c.*27., 29 *G.*2. *c.*33., 13* *G.*3. *c.*56., 57 *G.*3. *c.*115., and 57 *G.*3. *c.*122.; the payment of the wages of workmen in certain trades and occupations in the aforesaid acts enumerated, in any other way than in the lawful coin or money of this realm, is prohibited and made penal: And whereas it would be expedient that persons concerned in the trades or occupations, or concerned in the employment of artificers, workmen, or labourers of the descriptions mentioned in the aforesaid acts, should be permitted in all cases where such artificers, workmen, or labourers shall be willing to receive the same in payment, to satisfy and pay the wages of such artificers, workmen, or labourers in notes of the governor and company of the bank of *England*, or in notes of any duly licensed banker or bankers, issued under the authority and according to the provisions of the acts for the time being for granting and regulating the stamp duties, and other the act or acts for the time being, for that purpose made and provided; it is enacted, that it shall be lawful for all and every person or persons concerned in the trades or occupations, or concerned in the employment of artificers, workmen, or labourers of the descriptions mentioned in the aforesaid acts or any of them, to pay the wages of their, his, or her workman or workmen, labourer or labourers, artificer or artificers, in a note or notes of the governor and company of the bank of *England*, or in a note or notes of any duly licensed banker or bankers, issued under the authority of the statutes for the time being in that behalf made and provided, and according to the provisions of the statutes for the time being for granting and regulating the stamp duties in all cases where his, her, or their labourer or labourers, workman or workmen, artificer

58 G.3. c.51.

* Quære 17?

Wages may be paid in bank notes if the party consents.

(*a*) These statutes are repealed by stat. 49 *G.* 3. c. 109.

58 G.3. c.51. or artificers, shall freely and voluntarily consent, and be willing to accept and receive the same in payment or satisfaction of his, her, or their wages, but not otherwise.

So much of recited acts as relates to payment of forfeitures repealed.

§ 2. And whereas by the said acts or some of them it is provided, that the forfeitures and penalties thereby imposed on persons concerned in the trades and occupations, or concerned in the employment of artificers, workmen, and labourers of the description therein mentioned, who shall pay the wages of the said artificers, workmen, or labourers, or any part thereof, otherwise than in the lawful coin or money of this realm, contrary to the provisions of the said acts, shall be paid in some cases to the artificers, workmen, and labourers, and in other cases one moiety to the informer, and the other moiety to the party or parties aggrieved: And whereas it would tend to the more easy conviction of offenders, if the said forfeitures and penalties were in future in all cases to be paid, one moiety to the informer, and the other moiety to the use of the poor of the parish in which the offence is committed; it is therefore enacted, that so much of the said acts or any of them as directs the payment of the said forfeitures and penalties, either to the labourers, artificers, or workmen themselves, or in equal moieties to the informer and to the party or parties aggrieved, is repealed.

One moiety of forfeitures to informer, the other to the poor of the parish.

§ 3. Enacts, that if any person or persons shall incur and be convicted in any penalty or penalties under any of the said acts, such penalty or penalties, in which any such person or persons shall be so convicted, instead of being applied as by the said acts or any of them is directed, shall be paid and applied, one moiety thereof to the informer, and the other moiety to the churchwardens and overseers of the poor, or in *Scotland* to the kirk session of the parish within which the said offence shall have been committed, for the use of the poor of the said parish.

If informer give evidence, penalty to go to the poor.

§ 4. Provides, that if the informer shall be called to give evidence, the whole of the penalty shall in that case go to the poor of the parish.

Form of conviction in schedule (A.) to be adopted.

§ 5. And whereas difficulties have occurred in the execution of the aforesaid acts by reason of there being no form of conviction therein enacted; it is enacted, that for the more effectually preventing the pernicious practices mentioned in the said recited acts, and for the more easy and effectual carrying into effect the wholesome provisions of the said acts, the form of conviction inserted in schedule (A) to this act annexed shall be deemed and taken to be the legal and proper form of conviction as to any penalty or penalties to be incurred under any or either of the aforesaid acts.

Powers of recited acts extended to this act.

§ 6. All the powers, provisions, regulations, pains, penalties, and forfeitures in the said acts or any of them contained, for the purposes aforesaid, shall be exercised, enforced, levied, recovered, and applied, in as ample and full a manner as if the same had been hereby enacted.

Schedule to which Stat. 58 *G. 3. c.* 51. refers. (*See* § 5. p. 186.)

Schedule (A). A.

——shire } *BE it remembered, that on this* ——— *day of*
to wit. } ———, *at* ———, *in the said county of* ———, A. B. *of* ———, *in the said county of* ———, *was duly convicted before us* ——— (*two of his majesty's justices of the peace in and for the county aforesaid*), *in the penalty of* ———, *for having paid or caused to be paid the sum of* ———, *due to* C. D. *of the parish of* ———, *for wages for work done for him the said* A. B. *in the trade or occupation of* ———, *otherwise than as provided and directed by an act passed in the fifty-eighth year of his majesty king* George *the third, intituled* "An act to amend certain acts passed in the fourth year of the reign of king *Edward* the fourth; first, and tenth years of the reign of queen *Anne;* the first, twelfth, and thirteenth years of the reign of king *George* the first; the thirteenth, twenty-second, and twenty-ninth years of the reign of king *George* the second; and the thirteenth and fifty-seventh years of the reign of king *George* the third; prohibiting the payment of the wages of the workmen in certain trades, otherwise than in the lawful coin or money of this realm." *Given under our hands and seals the day and year first above written.*

A. Complaint of a Servant for Wages, on Stats. 20 *G.* 2. *c.* 19., 31 *G.* 2. *c.* 11., and 4 *G.* 4. *c.* 34. § 5, *ante*, p. 155, 156, and 165. A.

County of } *THE information and complaint of* A. S. *late of*
——— } ———, *in the county aforesaid, husbandman,* [or, *artificer, handicraftsman, miner,* &c. as the case may be,] *exhibited before me,* J. P. *esquire, one of his majesty's justices of the peace for the said county, the* ——— *day of* ———, *in the year* ———, *who on his oath saith,*

That at Whitsuntide *last* [or, other time] *he was hired* [or, *employed,* as the case may be,] *by* A. M. (a) *of* ——— *aforesaid, in the county aforesaid, yeoman,* [or, as the case may be,] *to be his servant in husbandry,* [or, *artificer, handicraftsman, miner,* &c. as the case may be,] *for the term of one half-year,* [or, as the case shall be,] *for the wages of* ———. *That he the said* A. S. *hath duly performed the said service* (b) *; and that he the said* A. M.

(a) The *employer* of the servant is the master for whose service he is retained, and not the bailiff of the farm, who, in fact, hires the servant. *R.* v. *Hoseason*, 14 *East*, 605.

(b) *Hath duly performed the said service.*] No money is due from the master to the servant until the completion of the year, or the end of the service. *Vide* per *Lawrence* J., *R.* v. *Whittlebury*, 6 *T. R.* 467. If a servant of his own accord shall depart from his master before his time expire, he shall lose all his wages. *Dalt. c.* 58. p. 141. *Com. Dig.* tit. "*Justices of Peace.*" (B. 63.)

But if he depart with the consent of his master, he shall have his wages for the time he served. *Ibid.*

refuseth to pay to him the said A. S. *the wages justly due unto him for the said service: and thereupon he the said* A. S. *prayeth that justice may be done, and that the said* A. M. [or, A. N. *the steward, agent, bailiff, foreman, or manager of the said* A.M.] *may be summoned before me the justice aforesaid to answer unto the said complaint.*

Before me, A. S.
J. P.

B. B. Summons of the Master, or his Steward, &c. thereon.

County of ——— } To the constable of ———, in the said county.

WHEREAS information and complaint hath been made unto me, J. P. *esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of* A. S. *late of* ———, *in the said county, husbandman,* [or, *artificer, handicraftsman, miner,* &c. as the case may be,] *that at* Whitsuntide [or, other time] *last he the said* A. S. *was hired* [or, *employed,* as the case may be,] *by* A. M. *of* ——— *aforesaid, in the county aforesaid, yeoman,* [or, as the case may be,] *to be his servant in husbandry,* [or, *artificer, handicraftsman, miner,* &c. as the case may be,] *for the term of one half-year,* [or, as the case may be,] *for the wages of* ———; *and that he the said* A. S. *hath duly performed the said service; and that the said* A. M. [or, A. N. *the steward, agent, bailiff, foreman, or manager of the said* A. M.] *doth refuse to pay him the said* A. S. *the wages justly due unto him for the said service; these are therefore to command you forthwith to summon the said* A. M. [or, A. N. *the steward, &c. of the said* A. M.] *to appear before me at* ———, *in the said county, on* ———, *the* ——— *day of this present month of* ———, *at the hour of* ——— *in the afternoon of the same day, to show cause why the said wages should not be paid. And be you then there to certify what you shall have done in the premises. Given under my hand and seal the* ——— *day of* ———, *in the* ——— *year of the reign of* ———.

C. C. Order for Payment of Wages, on Stats. 20 *G.*2. *c.* 19., 31 *G.*2. *c.*11. p.155, 156., and 4 *G.*4. *c.*34. § 4, 5. p. 164, 165.

County of ——— } *WHEREAS information and complaint hath been made unto me,* J. P. *esquire, one of his majesty's justices of the peace of and for the said county, upon the oath of* A. S., *late of* ———, *in the said county, husbandman,* [or, *artificer, handicraftsman, miner,* &c. as the case may be,] *that at* Whitsuntide *last* [or, other time] *he* [or, *she*] *the said* A. S. *was hired* [or, *employed,* as the case may be,] *by* A. M. *of* ——— *aforesaid, in the county aforesaid, to be his servant in husbandry,* [or, *artificer, handicraftsman, miner,* &c. as the case may be,] *for the term of one half-year* [or, as the case may be,] *for the wages of* ———, *and that he* [or, *she*] *the said* A. S. *hath duly performed the said service; and that he the said* A. M. *doth refuse to*

pay to him [or, *her*] *the said* A. S. *the wages justly due unto him* [or, *her*] *for the said service; and whereas the said* A. M. [or, A. N. *the steward, agent, bailiff, foreman, or manager of the said* A. M.] *having appeared before me, in pursuance of my summons for that purpose, hath not proved to me that the wages justly due unto the said* A. S. *as aforesaid have been duly paid unto the said* A. S., *nor hath showed to me any just cause why the said wages should not be paid, and hath not paid the same;* [or, *and whereas it appears to me, on the oath of* A. C., *constable of* ——— *aforesaid, that he the said* A. C. *by virtue of my precept to him directed, did duly summon the said* A. M. [or, *the said* A. N. *the steward or agent, &c.*] *to appear before me at a certain time and place therein prefixed, to show cause why the said wages should not be paid; and the said* A. M. [or, *the said* A. N. *the steward or agent, &c.*] *hath neglected to appear according to the said summons, and hath not showed any cause why the said wages should not be paid, and hath not paid the same;*] *I therefore, having duly examined into the truth and matter of the said complaint, by the oath of the said* A. S. [or, *by the oaths of the said* A. S. *and of* A. O. *and* A. P. *witnesses produced by him* [or, *her*] *the said* A. S. or, as the case may be,] *and upon due consideration had thereof, do hereby adjudge, determine, and order, that he the said* A. M. [or, *the said* A. N. *the steward or agent*, &c.] *upon due notice hereof* [or, *upon the* ——— *day of* ——— *instant or next,*] *do pay or cause to be paid to him* [or, *her*] *the said* A. S. *the sum of* ——— (a), *which appears to me to be justly due from the said* A. M. *to the said* A. S. *as and for his* [or, *her*] *wages as aforesaid. Given under my hand and seal the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———.

J. P. (*L. S*).

D. Warrant of Distress for the same. (*b*) D.

County of ——— } To the constable of ———, in the said county.

WHEREAS A. S., *late of* ——— *in the said county, husbandman,* [or, *artificer, handicraftsman, miner*, &c. as the case may be,] *hath complained unto me,* J. P. *esquire, one of his majesty's justices of the peace of and for the said county, that* A. M. *of* ——— *in the said county, yeoman,* [or, as the case may be,] *hath refused to pay unto him* [or, *her*] *the said* A. S. *the wages justly due unto him* [or, *her*] *for service in husbandry* [or, other service, as the case may be,] *duly performed by him the said* A. S. *for the said* A. M. *And whereas the said* A. M. [or, A. N. *the steward, agent, bailiff, or manager of the said* A. M.] *having appeared before me in pursuance of my summons for that purpose, hath not*

(a) The justice has no power when the sum in question exceeds 10*l*. See 4 *G*.4. c.34. § 5.

(*b*) If made on any steward, &c. it is not to be issued until 21 days after the service of the order; (see stat. 4 *G*.4. c.34. § 4.,) but it is otherwise if made on the master or mistress; see same stat. § 5.

proved to me that the wages justly due unto the said A. S. *as aforesaid have been paid to him* [or, *her*] *the said* A. S., *nor hath showed any just cause why the same should not be paid, and hath not paid the same* [or, *and whereas the said* A. M. [or, *the said* A. N. *the steward or agent*, &c.] *hath been duly summoned by me to show cause to me why the said wages should not be paid, but he the said* A. M. [or, *the said* A. N. *the steward or agent*, &c.] *hath neglected to appear according to the said summons, and hath not showed any cause why the said wages should not be paid, and hath not paid the same.*] *I therefore the said justice, upon due examination and consideration had thereof, on the* ——— *day of* ——— *now last past, by writing under my hand and seal, did thereupon adjudge, determine, and order, that he the said* A. M. [or, *the said* A. N. *the steward or agent*, &c.] *upon due notice thereof* [or, *upon the* ——— *day of* ——— *instant or next*] *should pay or cause to be paid to him* [or, *her*] *the said* A. S. *the sum of* ———, *which appeared to me to be justly due from the said* A. M. *to him* [or, *her*] *the said* A. S., *as and for his* [or, *her*] *wages as aforesaid; and whereas it appears to me that the said* A. M. [or, *the said* A. N. *the steward or agent*, &c.] *on the said* ——— *day of* ——— *now last past, had due notice of my said order, and that due demand of the said sum of* ——— *was then* [or, *was on the* ——— *day of* ——— *instant or last*] *made of him the said* A. M. [or, *of the said* A. N. *the steward or agent*, &c. (a)] *by him* [or *her*] *the said* A. S., *but that he the said* A. M. [or, *the said* A. N. *the steward or agent*, &c.] *did not then pay, nor hath yet paid the same, nor any part thereof; these are therefore to command you to make distress of the goods and chattels of him the said* A. M., *and if within the space of* [*four*] *days next after such distress by you made, the said sum of* ———, *together with the reasonable charges of taking and keeping the said distress shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by the sale thereof that you do pay the said sum of* ——— *unto him* [or, *her*] *the said* A. S., *returning the overplus upon demand unto him the said* A. M. [or, *to the said* A. N. *the steward or agent*, &c.] *the reasonable charges of taking, keeping, and selling the said distress being thereout first deducted. Given under my hand and seal, the* ——— *day of* ———, *in the year of of our Lord, one thousand eight hundred and twenty* ———.

J. P. (*L. S.*)

E.

E. Complaint of a Master against a Servant for Misbehaviour, on Stat. 20 *G.* 2. *c.* 19. *ante*, p. 155, 156..

County of ——— } *BE it remembered, that this* ——— *day of* ———, *in the year* ———, A. M. *of* ——— *in the county aforesaid, husbandman,* [as the case may be] *complaineth and maketh oath before me,* J. P. *esquire, one of his majesty's jus-*

(a) In case of the demand being made on the steward, &c. it would be proper to negative payment by the said A. N. *as well as by the said A. M.*

tices of the peace in and for the said county, that A. S., *late of* ——— *aforesaid, in the county aforesaid, servant in husbandry* [or, as the case may be] *to him the said* A.M., *hath in his said service* [or, *employment*] *been guilty of a certain misdemeanor, miscarriage, and ill behaviour, towards him the said* A. M., *in that he the said* A. S. [here set forth the particular offence]; *and thereupon he the said* A. M. *prayeth that justice may be done.*

Before me, A. M.
J. P.

F. Warrant for the Servant thereon. F.

County of ——— } To the constable of ———.

WHEREAS *information and complaint hath been made before me,* J. P. *esquire, one of his majesty's justices of the peace in and for the said county, by* A. M. *of* ——— *in the said county, husbandman,* [or, as the case shall be,] *upon the oath of the said* A. M. *against* A. S., *late of* ——— *aforesaid, in the county aforesaid, servant in husbandry* [or, as the case shall be,] *to him the said* A. M., *that he the said* A. S. *hath in his said service* [or *employment*] *been guilty of a certain misdemeanor, miscarriage, and ill behaviour, towards him the said* A. M., *in that he the said* A. S. [here set forth the particular offence.] *These are therefore to command you forthwith to bring the said* A. S. *before me to answer unto the said complaint, and to be further dealt with according to law. Given under my hand and seal, the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———.

G. Commitment of a Servant to the House of Correction, on Stats. 20 *G.* 2. *c.* 19. § 2. *ante*, p. 156., and 4 *G.* 4. *c.* 34. § 3. *ante*, p. 164. G.

County of ——— { To the constable of ——— in the said county, and to the keeper of the house of correction at ——— in the said county.

WHEREAS *information and complaint hath been made before me,* J. P. *esquire, one of his majesty's justices of the peace of and for the said county, by* A. M. *of* ——— *in the said county, husbandman,* [or, as the case shall be,] [or, *by* A. N. *the steward, agent, bailiff, foreman, or manager of the said* A. M.] *upon the oath of the said* A. M. [or, *of the said* A. N.] *against* A. S., *late of* ——— *aforesaid, in the county aforesaid, servant in husbandry* [or, as the case shall be,] *to the said* A. M., *that he* [or, *she*] *the said* A. S. *hath in his said service* [or, *employment*] *been guilty of a certain misconduct, misdemeanor, miscarriage, and ill behaviour towards him the said* A. M., *in that he* [or, *she*] *the said* A. S. [here set forth the particular offence.] *And whereas in pursuance of the statutes in that case made and provided, I have duly examined the proofs and allegations of both the said parties, touching the matter of the*

said complaint, and upon due consideration had thereof, have adjudged and determined that he [or, *she*] *the said* A. S. *hath in his* [or, *her*] *said service* [or, *employment*] *been guilty of a certain misconduct, misdemeanor, miscarriage, and ill behaviour towards the said* A. M., *in that he* [or, *she*] *the said* A. S. [here set forth the particular offence.] *And I do therefore convict him* [or *her*] *the said* A. S. *of the said offence, in pursuance of the statutes in that case made and provided. These are therefore to command you the said constable forthwith to convey the said* A. S. *to the said house of correction at* ——— *aforesaid, and to deliver him* [or, *her*] *to the keeper thereof, together with this warrant: And I do hereby command you the said keeper to receive the said* A. S. *into your custody in the said house of correction, there to remain and be held to hard labour for the space of* ——— [the time not to exceed three months] *from the date hereof. And I do also order that the said* A. S. *shall abate from his* [or, *her*] *wages to be paid him* [or, *her*] *by the said* A. M. *the sum of* ——— *for the said period of* ———, *during which he* [or, *she*] *the said* A. S. *shall be so confined in the said house of correction. And I do hereby discharge the said* A. M. *from the payment of the said sum of* ——— *as part of the wages of him* [or, *her*] *the said* A. S. *And for your so doing, this shall be your sufficient warrant.*
II. *Given under my hand and seal, the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———.

J. P. (*L. S.*)

II. Or otherwise he may be punished by Abatement of Wages, as follows.

[Follow the form of commitment to the end of the adjudication;]

I DO therefore hereby order, as a punishment for the said offence [or, *offences*] *that the said* A. S. *shall abate the sum of* ——— *the whole of the wages due to him* [or, *her*] *the said* A. S., [or, *shall abate from his* [or, *her*] *wages to be paid to him* [or, *her*] *by the said* A. M. *the sum of* ———, *part thereof,*] *and do hereby discharge the said* A. M. *from the payment of the said sum of* ——— *the whole* [or, *part*] *of the wages of him the said* A. S. *Given under my hand and seal, the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———.

I. J. P. (*L. S.*)

I. Or otherwise he may be discharged thus:

I DO therefore hereby order, as a punishment for the said offence, [or, *offences,*] *that the said* A. S. *be discharged, and do hereby discharge him* [or *her*] *the said* A. S. *from his* [or *her*] *said contract, service* [or *employment*], *and the said* A. M. *from keeping him* [or *her*] *the said* A. S. *Given under my hand and seal, the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———.

J. P. (*L. S.*)

K. Complaint of a Servant against the Master, for ill Usage; on Stat. 20 G. 2. c. 19. § 2. ante, p. 156. K.

County of ——— } *BE it remembered, that this* ——— *day of* ———, *in the year* ———, A. S. *of* ——— *in the county aforesaid, husbandman,* [or, *artificer, handicraftsman, miner,* &c. as the case may be,] *complaineth and maketh oath before me,* J. P. *esquire, one of his majesty's justices of the peace in and for the said county, that at* Michaelmas *last* [or other time] *he the said* A. S. *was hired,* [or, *employed,* as the case may be,] *by* A. M *of* ——— *aforesaid, in the county aforesaid, yeoman,* [or, as the case may be,] *to be servant in husbandry,* [or, *artificer, handicraftsman, miner,* &c. as the case may be,] *to him the said* A. M. *for the space of* ——— [or, as the case shall be]; *and that he the said* A. S. *did accordingly at* Michaelmas *last* [or other time] *as aforesaid, enter upon, and afterwards until this present time hath continued and doth continue in the said service* [or *employment*]; *and that he the said* A. M. *during the said service,* [or *employment*] *hath misused him the said* A. S. *and particularly* [here set forth the special offences]: *And thereupon the said* A. S. *prayeth that justice may be done in the premises.*

Before me, A. S.
J. P.

L. Summons of the Master thereon. L.

County of ——— } To the constable of ———.

WHEREAS complaint hath been made unto me J. P. *esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of* A. S. *of* ——— *in the said county, husbandman,* [or, *artificer, handicraftsman, miner,* &c. as the case may be,] *that at* Michaelmas *last* [or other time] *he the said* A. S. *was hired,* [or *employed,* as the case may be,] *by* A. M. *of* ——— *aforesaid, in the said county, yeoman,* [or, as the case may be,] *to be servant in husbandry,* [or, *artificer, handicraftsman, miner,* &c.] *to him the said* A. M. *for the space of* ——— [or, as the case shall be]; *and that he the said* A. S. *did accordingly at* Michaelmas *last* [or other time] *as aforesaid enter upon and afterwards until this present time hath continued and doth continue in the said service* [or *employment*]: *And that he the said* A. M. *during the said service* [or *employment*] *hath misused him the said* A. S. *and particularly* [here set forth the special offences]: *These are therefore to require you in his majesty's name to summon the said* A. M. *to appear before me on* ——— *next, at the house of* ——— *in* ——— *in the said county, at the hour of* ——— *in the forenoon of the same day, to answer unto the said complaint. And be you then there to certify what you shall have done in the execution thereof. Given under my hand and seal, the* ——— *day of* ———, *in the* ——— *year* ———.

M.

M. Discharge of the Servant thereupon.

THE same as before to the end of the complaint: *And whereas the said* A. M. *in pursuance of my summons for that purpose hath appeared before me, to answer unto the said complaint, but hath not proved that he is not guilty of the said complaint and charge; but on the contrary it hath been fully and duly proved before me upon oath to my satisfaction that he the said* A. M. *hath misused him the said* A. S. *in his service* [or *employment*] *as aforesaid, and particularly* [here set forth the special offence or offences]: ——— [Or, *And whereas it appears to me upon the oath of* A. C., *constable of* ——— *aforesaid, that he the said* A. C. *by virtue of my precept to him directed did duly summon him the said* A. M. *to appear before me at a reasonable time therein prefixed, to answer unto the said complaint, and he the said* A. M. *hath neglected to appear according to the said summons; and whereas it hath been fully and duly proved before me upon oath, to my satisfaction, that he the said* A. M. *hath misused him the said* A. S. *in his service* [or *employment*] *as aforesaid, and particularly* [here set forth the particular offence or offences]; *I do therefore hereby order, in pursuance of the statute in that case made and provided, that he the said* A. S. *be discharged, and do hereby discharge him the said* A. S. *from his said service* [or *employment*]. *Given under my hand and seal, the* ——— *day of* ——— *in the year* ———.

N.

N. Complaint (on Stat. 6 G. 3. *c.* 25. § 4. *ante*, p. 163.) against a Person absenting himself from his Service before his Contract has been completed; or for any other Misdemeanor.

County of }
——— }

BE it remembered, that this ——— *day of* ———, *in the year* ——— A. M. *of* ——— *in the county aforesaid, artificer,* [or *by* A. N. *of* ——— *in the said county, steward or agent to one* A. M. *of* ——— *in the said county, artificer,* as the case may be,] *complaineth and maketh oath before me* J. P. *esquire, one of his majesty's justices of the peace, in and for the said county, that* A. O. *late of* ——— *aforesaid, in the said county, artificer,* [or, *calico printer,* &c. as the case may be,] *did contract with the said* A. M. *to serve the said* A. M. *for* [here state the time of the contract], *and that the said* A. O. *hath absented himself from his said service before his said contract is complete,* [or, *hath been guilty of a certain misdemeanor in that he the said* A. O. setting forth the particular offence]; *and thereupon he the said* A.M. *prayeth that justice may be done.*

Before me, A. M.
J. P.

O. Warrant thereupon. O.

County of ——— } To ———, the constable of ———, in the said county.

WHEREAS information and complaint hath been made before me, J. P. *esquire, one of his majesty's justices of the peace in and for the said county, by* A. M. *of ———, in the said county, artificer,* [or, *by* A. N. *of ———, in the said county, steward or agent to one* A. M. *of ——— in the said county, artificer,* as the case may be,] *upon the oath of the said* A. M. [or, A. N.] *that* A. O. *late of ——— aforesaid, in the said county, artificer* [or, *calico printer,* &c. as the case may be,] *did contract with the said* A. M. *to serve the said* A. M. *for* [here state the time of the contract], *and that he the said* A. O. *hath absented himself from his said service before his said contract is complete* [or, *hath been guilty of a certain misdemeanor in that he the said* A. O. setting forth the particular offence]. *These are therefore to command you to bring the said* A. S. *before me to answer unto the said complaint, and to be further dealt with according to law. Given under my hand and seal, the ——— day of ———, in the year of our Lord one thousand eight hundred and ———.*

P. Commitment thereon. P.

County of ——— { To ———, the constable of ———, in the said county, and to the keeper of the house of correction at ———, in the said county.

WHEREAS information and complaint hath been made before me, J. P. *esquire, one of his majesty's justices of the peace in and for the said county, by* A. M. *of ———, in the said county, artificer,* [or, *by* A. N. *of ———, in the said county, steward or agent to one* A. M. *of ——— in the said county, artificer,* as the case may be,] *upon the oath of the said* A. M. [or, A. N.] *that* A. O. *late of ——— aforesaid, in the said county, artificer,* [or, *calico printer,* &c. as the case may be,] *did contract with the said* A. M. *to serve the said* A. M. *for* [here state the time of the contract], *and did afterwards absent himself from his said service, before the term of his said contract was completed* [or, *was afterwards guilty of a certain misdemeanor, in that he the said* A. O. [setting forth the particular offence]. *And whereas in pursuance of the statute in that case made and provided, I have duly examined the proofs and allegations of both the said parties, touching the matter of the said complaint, and upon due consideration had thereof, have adjudged and determined that he the said* A. O. *did contract with the said* A. M. *to serve him the said* A. M. *for* [here state the time of the contract] *as aforesaid, and did afterwards absent himself from the said service before the term of his said contract was completed* [or, *was afterwards guilty of a certain misdemeanor in that he the said* A. O. setting forth the particular offence]. *And I do therefore convict him the said* A. O. *of the said offence in*

pursuance of the statute in that case made and provided. These are therefore to command you the said constable, forthwith to convey the said A. O. *to the said house of correction at* ——— *aforesaid, and to deliver him to the keeper thereof, together with this warrant; and I do hereby command you the said keeper to receive the said* A. O. *into your custody in the said house of correction, and him there safely keep for the space of* [not exceeding three months nor less than one month] *from the date hereof; and for your so doing, this shall be your sufficient warrant. Given under my hand and seal, the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———.

Q. Q. Form of Conviction and Commitment, provided by Stat. 5 G. 4. *c.* 95. Schedule. See § 7. 11. *ante*, p. 174, 175.

BE it remembered, that on the ——— *day of* ———, *in the* ——— *year of his majesty's reign, and in the year of our Lord* ———, A. B. *is convicted before us* [naming the justices], *two of his majesty's justices of the peace for the county,* [or, *riding division, city, liberty, town,* or *place,*] *of* ———, *of having* [stating the offence] *contrary to the statute made in the fifth year of the reign of his present majesty, intituled* "An act to repeal the laws relative to the combination of workmen; and for other purposes therein mentioned;" *and we the said justices do hereby order and adjudge the said* A. B. *for the said offence to be committed to and confined in the common gaol for the said county,* [or, *riding, division, city, liberty, town,* or *place,*] *for the space of* ———, [or, *to be committed to the house of correction at* ———, *within the said county,* [or, *riding, division, city, liberty, town,* or *place*; and if the offender is to be kept to hard labour,] *there to be kept to hard labour, for the space of* ———. *Given under our hands the day and year above written.*

R. R. Form of Commitment of a Person summoned as a Witness. See stat. 5 G. 4. *c.* 95. § 9. 11. *ante*, p. 175, 176.

WHEREAS C. D. *hath been duly summoned to appear and give evidence before us,* [naming the justices who issued the summons,] *two of his majesty's justices of the peace for the county* [or, *riding, division, city, liberty, town, or place,*] *of* ———, *on this* ——— *day of* ———, *at* ———, *being the time and place appointed for hearing and determining the complaint made on the oath of* [the *informer* or *prosecutor*] *before us, against* A. B., *of having* [stating the offence as laid in the information] *contrary to the statute made in the fifth year of the reign of his present majesty, intituled* "An act to repeal the laws relative to the combination of workmen; and for other purposes therein mentioned;" *and whereas the said* C. D. *hath not appeared before us at the time and place aforesaid specified for that purpose, or offered any reasonable excuse for his default* [or, *and whereas the said* C. D. *having appeared before us at the time and place aforesaid, specified for that purpose, hath not submitted to be examined as a witness, and give his evidence*

before us touching the matter of the said complaint, but hath refused so to do] *: Therefore we the said justices do hereby, in pursuance of the statute, commit the said* C. D. *to the* [describing the prison], *there to remain without bail or mainprize for his contempt aforesaid, until he shall submit himself to be examined and give his evidence before us touching the matter of the said complaint, or shall otherwise be discharged by due course of law; and you the* [*constable,* or other *peace officer* or *officers* to whom the warrant is directed] *are hereby authorised and required to take into your custody the body of the said* C. D., *and him safely to convey to the said prison, and him there to deliver to the gaoler or keeper thereof, who is hereby authorised and required to receive into his custody the body of the said* C. D., *and him safely to detain and keep, pursuant to this commitment. Given under our hands, this* ——— *day of* ———, *in the year of our Lord* ———.

This commitment to be directed to the proper peace officer, and the gaoler or keeper of the prison.]

S. Form of the Award to be written at the Foot or upon the Back of the Order of the Justices of Peace certifying the Reference; under Stat. 5 G.4. *c.*96. § 22. 5. *ante*, p. 179, 183. S.

WE, I. K. *and* L. M. [name and describe the referees], *the referees appointed to settle the matters in dispute between the parties within named* [or, I. K. *one of the referees so appointed;* or, L. M. *the other referee appointed having failed to attend;* or, *I* N. O. *the justice,* as the case may be,] *do hereby adjudge and determine that* [here set forth the determination; to which the referee or referees, or justice, as the case may be, shall subscribe their names].

T. Form of Endorsement, extending the Time limited for making the Award; under Stat. 5 G. 4. *c.* 96. § 21. *ante*, p. 182. T.

WE, A. B. *and* C. D., *parties to the within reference, do hereby agree to extend the same to the* ——— *day of* ——— *inclusive. Witness our hands, this* ——— *day of* ———.

A. B.

Witness, C. D.

U. Form of Acknowledgment of Fulfilment of the Award, to to be written at the Foot or on the Back thereof; under Stat. 5 G. 4. *c.* 96. § 23. *ante*, p. 183. U.

I A. B. *do hereby acknowledge that the above award hath been fulfilled by* C. D., *who is hereby discharged of the same. Witness my hand, this* ——— *day of* ———.

Witness, A. B.

V. V. Form of the Oath to be administered by the Arbitrators or Justice to the Parties and Witnesses; under Stat. 5 G 4. *c.* 96. § 8. *ante*, p. 179.

THE evidence that you shall give before us, the arbitrators appointed by C. D. *and* C. D. [the parties], *to determine the matters in difference between them, under and by virtue of an act passed in the fifth year of the reign of king* George *the fourth, intituled* "An act [state the title of this act]," *shall be the truth, the whole truth, and nothing but the truth.*

So help you God.

W W. Form of Commitment of a person summoned as a Witness before the Arbitrators; on Stat 5 G. 4. *c.* 96. § 9. 27. *ante*, p. 180.

WHEREAS proof on oath hath been made before me, one of his majesty's justices of the peace for the county [or, *riding, stewartry, division, city, burgh, liberty, town,* or *place,*] *of* ——— *on this* ——— *day of* ———, *that* A. B. *hath been duly summoned, and hath neglected to appear and give evidence before* C. D. *and* E. F., *the arbitrators appointed by and between* G. H. *and* I. K. *to determine the matters in dispute between them at* ———, *in the county* [or, *riding, stewartry, division, city, burgh, liberty, town,* or *place,*] *of* ———, *on the* ——— *day of* ———, *under and by virtue of an act made in the fifth year of the reign of his present majesty, intituled* "An act [here set forth the title of this act]," *and the said* A. B. *being required by me, the said justice, to give evidence before the said arbitrators, and still refusing so to do, therefore I, the said justice, do hereby, in pursuance of the said act, commit the said* A. B. *to the* [describing the prison and the house of correction], *there to remain without bail or mainprize for his* [or *her*] *offence aforesaid, until he* [or *she*] *shall submit himself* [or *herself*] *to be examined, and give his* [or *her*] *evidence before the said arbitrators, touching the matters referred to them as aforesaid, or shall otherwise be discharged by due course of law: And you the* [*constable* or other *peace officer* or *officers* to whom the warrant is directed] *are hereby authorised and required to take into your custody the body of the said* A. B. *and him* [or *her*] *safely to convey to the said prison* [or *house of correction*] *and him* [or *her*] *there to deliver to the gaoler* [or *keeper*] *thereof, who is hereby authorised and required to receive into his custody the body of the said* A. B., *and him* [or *her*] *safely to detain and keep, pursuant to this commitment. Given under my hand, this* ——— *day of* ———, *in the year of our Lord* ———.

[This commitment to be directed to the proper peace officer, and the gaoler [*or* keeper] of the prison *or* house of correction.]

X. Form of Warrant of Distress; under Stat. 5 G. 4. *c.* 96. § 24. *ante*, p. 183. X.

To the constable of ———.

WHEREAS ——— *of* ———, *under an award made by* ———, *on the* ——— *day of* ———, *in the year of our Lord* ———, *pursuant to an act passed in the fifth year of the reign of his present majesty, intituted* " An act [state the title of this act]," *is liable to pay to* ——— *of* ——— *the sum of* ———, *and also the sum of* ———, *and the said* ——— *having refused or neglected to pay the same for the space of two days and upwards subsequent to the making such award, these are therefore to command you to levy the said sum of* ——— *by distress and sale of the goods and chattels of the said* ———, *and I do hereby order and direct the goods and chattels so to be distrained to be sold and disposed of within* ——— *days, unless the said sum of* ———, *for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, shall be sooner paid; and you are also hereby commanded to certify to me what you shall do by virtue of this my warrant. Given under my hand and seal, at* ———, *the* ——— *day of* ———.

Y. Form of the Constable's Return to the Warrant of Distress; on Stat. 5 G. 4. *c.* 96. § 24. *ante*, p. 183. Y.

I, ———, *constable of* ———, *do hereby certify to* ———, *justice of the peace of* ———, *that I have made diligent search for, but do not know of, nor can find any goods and chattels of* ———, *by distress and sale whereof I may levy the sum of* ———, *pursuant to his warrant for that purpose. Dated the* ——— *day of* ———, *in the year of our lord* ———. *Given under my hand this* ——— *day of* ———, *in the year of our Lord* ———.

Z. Form of Commitment thereupon to the House of Correction. Z.

County of ——— } To the constable of ———, and also to the keeper of the house of correction at ———.

WHEREAS ——— *of* ———, *under an award made by* ———, *on the* ——— *day of* ———, *in the year of our Lord* ———, *pursuant to an act passed in the fifth year of the reign of his present majesty, intituled* " An act [state the title of this act]," *became liable to pay to* ——— *the sum of* ———, *and also the sum of* ——— *for costs, time, and expences, making together the sum of* ———, *and having refused or neglected to pay the same for the space of two days and upwards subsequent to the making of such award, my warrant was, according to the provisions of the said act, duly made and issued for the levying the said sum of* ———, *by distress and sale of the goods and chattels of the said*

——; *and whereas it appears by the return of* —— *constable of* ——, *dated the* —— *day of* ——, *that he hath made diligent search for, but doth not know of, nor can find any goods and chattels of the said* ——, *by distress and sale whereof the said sum of* —— *may be levied pursuant to my said warrant: These are therefore to command you, the said constable of* ——, *to apprehend the said* ——, *and convey him to the said house of correction at* —— *aforesaid, and deliver him there to the keeper of the said house of correction; and these are also to command you the keeper of the said house of correction to receive him the said* —— *into the said house of correction, and there keep him without bail or mainprize for the space of* —— *months, unless the said sum of* ——, *so ordered to be paid as aforesaid, shall be sooner satisfied, with all reasonable expences. Given under my hand and seal, at* ——, *the* —— *day of* ——, *in the year of our Lord* 18—.

Z a. Z a. Form of Commitment where the Warrant of Distress is withheld; on Stat. 5 G. 4. *c.* 96. § 25. *ante*, p. 183.

County of } To the constable of ——, and also to the keeper
—— } of the house of correction at ——.

WHEREAS —— *of* ——, *under an award made by* ——, *on the* —— *day of* ——, *in the year of our Lord* ——, *pursuant to an act passed in the fifth year of the reign of his present majesty, intituled* " An act [state the title of this at]," *became liable to pay to* —— *the sum of* ——, *and also the sum of* —— *for costs, time, and expences, making together the sum of* ——, *which he has refused or neglected to pay for the space of two days and upwards subsequent to the making of such award; and whereas it appears to me that the recovery of such sum and warrant of distress and sale of the goods and chattels of the said* —— *will be attended with consequences ruinous or in an especial manner injurious to the defaulter,* [*and his family,* if any,] *and I have therefore determined to withhold such warrant and to commit the said* —— *to prison, pursuant to the said act: These are therefore to command you, the said constable of* ——, *to apprehend the said* ——, *and convey him to the said house of correction at* —— *aforesaid, and deliver him there to the keeper of the said house of correction; and these are also to command you, the keeper of the said house of correction, to receive him the said* —— *into the said house of correction, and there keep him without bail or mainprize for the space of* —— *months, unless the said sum of* ——, *so ordered to be paid as aforesaid, shall be sooner satisfied, with all reasonable expences. Given under my hand and seal, at* ——, *the* —— *day of* ——.

Sessions.

Of the Sessions of the Peace; And herein,

[36 Ed. 3. c. 12.—12 R. 2. c. 10.—14 R. 2. c. 11.—2 H. 5. st. 1. c. 4.—14 H. 6. c. 4.—5 G. 2. c. 19.—22 G. 2. c. 46.—12 G. 3. c. 20.—32 G. 3. c. 45.—54 G. 3. c. 84.—59 G. 3. c. 28.]

THE session of the peace is a court of record, holden before two or more justices, whereof one is of the *quorum*, for execution of the authority given them by the commission of the peace, and certain statutes and acts of parliament. *Dalt. c.* 185. *p.* 456. *Cro. Cir. C.* 13. Sessions, what.

It is a meeting of justices for the execution of their general authority. *Lamb.* 379.

Two or more justices.] The sessions cannot be held without the presence of two justices. 1 *Blac. Com.* 354. (*n*).

If there are not justices enough to *hold* a sessions, there are not enough to *adjourn* it legally, and every act done after such an adjournment is void. *Rex* v. *Westrington,* 2 *Bott.* 733. 2 *Nol. P. L.* 437. 3*d edit.*

The king may grant commissions of the peace not only for the whole county, but for any particular district within it, exclusive of the jurisdiction of the justices of the county at large; but the latter can only be effected by a non-intromittant clause, prohibiting the county justices from interfering in that district. *R.* v. *Sainsbury,* esq. *and Another,* 4 *T. R.* 456. *et vide* Vol. III. p. 138.

§ I. Of the Time and Place of holding the Sessions.

Stat. 36 *Ed.* 3. *c.* 12. Directs, that the justices shall hold their sessions four times in the year, viz. one session within the *Utas* of 36 Ed. 3. c. 12.

the *Epiphany*, the second within the second week of *Midlent*, the third betwixt the feasts of *Pentecost* and of *St. John Baptist*, the fourth within eight days of *St. Michael*.

12 R. 2. c. 10. At what time the sessions shall be kept. But by stat. 12 *R.* 2. *c.* 10. The justices shall keep their sessions in every quarter of the year at least; and by three days, if need be; on pain of being punished according to the discretion of the king's council, at the suit of every man that will complain.

2 H. 5. st. 1. c. 4. 54 G. 3. c. 84. And by stat. 2 *H.* 5. *st.* 1. *c.* 4. § 2. The justices shall make their sessions four times by the year, that is to say, in the first week after the feast of *St. Michael*, (now, by stat. 54 *G.* 3. *c.* 84., altered and directed to be in the first week after the 11th of *October*, except in *London* and *Middlesex*,) in the first week after the *Epiphany*, in the first week after the clause of *Easter*, and in the first week after the translation of *St. Thomas* the martyr; and more often if need be. And that the same justices hold their sessions throughout the realm of *England*, in the same weeks every year from henceforth.

14 H. 6. c. 4. In Middlesex. But by stat. 14 *H.* 6. *c.* 4. in *Middlesex*, the justices shall keep their sessions twice in the year at least, and more often (if need be) for any riot or forcible entry.

And because of the multiplicity of business arising in this county more than in any other, it is customary to hold eight sessions every year, *viz.* four general quarter, and four general sessions; and the justices have therein a commission of *Oyer and Terminer*; which sessions they hold as often as they hold the sessions of the peace. And *Westminster* has a distinct commission of the peace.

The strict regular exposition of stat. 2 *H.* 5. *st.* 1. *c.* 4. is, that if the feast-day fall upon a *Sunday*, the sessions shall be held in the week following, and not the same week. 2 *Hale*, 49.

Are variously held in different counties. Yet it is very plain, that the quarter sessions are variously holden in several counties, some at one day, and some at another; yet it hath been ruled, that these are each of them good quarter sessions within the several acts that relate to quarter sessions; for these acts, especially the 2 *H.* 5., are only directory, and in the affirmative, and therefore, though the sessions are held on another day, according to the general direction of the 12 *R.* 2., yet they are quarter sessions. 2 *Hale*, 50.

When a sufficient number of justices do not appear. It sometimes happeneth that on the day appointed for holding the sessions, a sufficient number of justices do not appear. And a question arises, what is to be done in such a case? It seemeth to be generally understood that the sessions for that quarter of the year is irrecoverably lost. But the matter seemeth not altogether so desperate. For there are obvious remedies; by the first of which it may be possible to recover the sessions in the very identical week next after any of the respective holidays above mentioned; by the latter, at all events, a sessions may be held. As to the former case, there cannot be time, indeed, within that week, to summon a sessions *de novo*; but neither is that absolutely necessary. A session may be holden without a previous summons; and the justices there may adjourn to another day, and issue their precept to the sheriff against the day of adjournment. To which purpose, Mr. *Lambard* (380.) saith thus, "Albeit that the sessions be commonly, and most orderly, summoned by a precept in writing; yet it is not altogether of neces-

sity (for the making of a lawful sessions) to have it so. For if competent justices of the peace do get men to serve, and thereupon do hold a sessions, without any precept before directed, all presentments made before them by twelve lawful men shall be of force in law; but no man shall lose any thing for his default of appearance there, because no man had notice of their sitting." Thus far as to saving the original sessions' week; for how many adjournments soever shall be holden afterwards in that quarter of the year, all shall refer to the first commencement of the sessions; and thereby some processes or recognisances may be saved which may possibly run for appearance at the sessions to be holden in the week next after any of the holidays above mentioned.

But the general (and better) form of such instruments is otherwise. And certainly, though a session shall not be holden within a week after such feast day, it doth not follow, that therefore it cannot be holden in any of the twelve weeks after. Undoubtedly any two justices, one whereof is of the *quorum*, by the words of the commission of the peace, may issue their precept to the sheriff, to summon a session, for the general execution of their authority, And so far is the statute from saying, that if the sessions be not holden in the week next after such respective feasts as aforesaid, such session shall be void, the very same statute directs, that the justices shall hold their sessions *more often if need be;* and greater need cannot be than when the former meeting of the justices hath been frustrated. 2 *Haw.* c. 8. § 41.

Difference between *general*, *quarter*, and *special* sessions.

Mr. *Lambard* seems to make no distinction between general and quarter sessions, but to take them as synonymous terms. But it seems the better opinion, that quarter sessions are a species only of the general sessions, and that such sessions only are properly called *general quarter sessions*, which are holden in the four quarters of the year in pursuance of the statute of the 2 *H.* 5.; and that any other sessions holden at any other time for the general execution of the justices' authority, which by the said statute they are authorised to hold oftener than at the times therein specified, if need be, may properly be called *general* sessions, and that those holden on a special occasion for the execution of some particular branch of their authority, may properly be called *special* sessions. (*a*) 2 *Haw.* c. 8. § 47.

Queries and opinion as to the power of justices to hold an original general sessions, or adjourned quarter sessions for the trial of prisoners.

(*a*) The crowded state of our gaols, consequent on the late alarming increase of crime, having, in the opinion of the magistrates of one of our populous manufacturing counties, rendered a more speedy trial of offenders at quarter sessions indispensably necessary; and it having been suggested from high authority, that the justices of the peace are empowered to hold a general sessions, whenever they think fit, at which they may exercise all those parts of their jurisdiction, which are not expressly limited to the quarter sessions; the following queries were submitted by the secretary of state for the home department to the law officers of the crown, viz.

" Whether, either by the commission of the peace or by statute, the justices are empowered to hold a general sessions, or an adjournment of the quarter sessions for the trial of prisoners, at such times and places as they may think proper, and for that purpose to summon jurors and compel the attendance of prosecutors and witnesses; and if empowered so to do, whether it would be advisable to hold such sessions?"

There is no determination by any statute of any particular place for the sessions to be kept, so it be within the county. And

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The following answer, which the editor has great pleasure in communicating, was received.

"The stat. 36 *Ed.*3. *c.*12. directs, that in the commission there shall be a clause, that the justices hold their sessions four times a-year, naming the periods. The form of this commission is not now followed, for there is no direction contained in the present commission as to the periods of the year at which the sessions are to be holden. This variation from the form so directed, has probably arisen from the time at which sessions are to be holden having been prescribed by act of parliament; namely, by the stats. 12 *R.*2. *c.*10. and 2 *H.*5. *st.*1. *c.*4. These statutes are *directory* as to holding sessions once in every quarter of the year, and thence called the quarter sessions; but do not restrict the justices to the holding of four sessions only in the year, because the words are, 'or oftener if need be.'

"The words of these statutes, therefore, and the terms of the commission of the peace, authorise the justices to hold a general sessions of the peace at other and different times than at the four periods of the year which are prescribed by statute for holding the general quarter sessions. Ld. *Hale*, in his *H. P. C. vol.* ii. *c.*7., recognises the *general* sessions as well as the *quarter* sessions. He says the public sessions are of two kinds; viz. the general quarter sessions, and general sessions that are not quarter sessions.

"The same doctrine is laid down by Mr. Serjeant *Hawkins*, and by *Lambard*, *b.*4. *c.*2.

"There are, however, dicta in several settlement cases, in which the court express an opinion that the words '*oftener if need be*,' in the statutes of 2 *H.*5. and 12 *R.*2. only authorise adjournments of quarter sessions, and not the holding of other original general sessions. On considering the cases in which such dicta occur, it does not appear to us that they militate against the power of holding original general sessions as distinct from quarter sessions, for in those cases the question was, whether an appeal had been lodged and heard at the next sessions; and as the quarter sessions at which the appeals had been lodged had been suffered to expire, and the sessions at which they were heard was an original sessions, and not holden by adjournment, and no adjournment of the appeal had been made, the court were of opinion the sessions had no jurisdiction to decide upon the appeal, and therefore they are not authorities to show that justices may not hold general sessions of the peace distinct from quarter sessions. But if general sessions of the peace were to be assembled, pending a continuation of the general quarter sessions of the peace by adjournment, we are of opinion such general sessions would supersede and put an end to the general quarter sessions, and no adjournment thereof could be holden after the general sessions. But we are also of opinion that it will not be necessary for the justices to resort to a general sessions of the peace, as distinct from the quarter sessions, to effect their object of trying offences which may be committed between the time of holding the general quarter sessions and the day to which they are adjourned. In the county of *Surrey* such trials are frequently had. At the general quarter sessions of the peace, a day of adjournment is fixed by the justices, such a day having generally been agreed upon before, and notice is given to all the magistrates by the clerk of the peace, as well as advertised in the newspaper. The grand jury and the petit jury, before they are dismissed from their attendance, are informed that their attendance will be required at the day to which the court intend to adjourn, and they are again summoned for that purpose by the sheriff, and no inconvenience is felt from this mode of proceeding. As to the commitment of prisoners, they are committed till discharged by due course of law; and under such commitments are brought by the gaoler to the sessions at the day to which they have been adjourned for the trial of such offences. If the accused are admitted to bail, the recognisances, as well as the recognisances of the persons bound over to prosecute or give evidence, are taken, conditioned to appear at the general quarter sessions to be holden by adjournment on such a day; and in this county the justices make several adjournments for these purposes. *And this, we are of opinion, will be the best and proper mode of proceeding for the justices of the county of Stafford; — will effect all the purposes of a general sessions, and be free from any doubt as to the power of holding general sessions, and from the inconvenience of a general sessions superseding or putting an end to any adjournment of the quarter sessions.*

if a place within the county be incorporated, and have justices of its own, yet the same remains part of the county, and the justices of the county may notwithstanding hold their sessions there, although it may be that they shall not intermeddle with matters arising there, save only such as shall happen in their sessions, or with relation thereunto. *Dalt. c.* 185. *p.* 456. Where the sessions shall be holden.

§ II. Of Summons, and who must attend at Sessions.

And from hence it seems to follow, that any two such justices may direct their precept under their teste to the sheriff for the summons of the sessions, thereby commanding him to return a grand jury before them, or their fellow-justices, at a certain day and place, and to give notice to all stewards, constables, and bailiffs of liberties to be present and do their duties at such day and place, and to proclaim in proper places throughout his bailiwick that such sessions will be holden at such day and place, and to attend there himself to do his duty. 2 *Haw. c.* 8. § 42. Precept to summon the sessions.

Such precept shall bear teste, or be dated fifteen days before the return, and ought forthwith to be delivered to the sheriff, to the end he may have sufficient time to proclaim the sessions, to summon and return the several juries, and to warn all officers and others that have business there, to attend. *Nels. Introduct.* 35.

And it is said that such a precept by any two justices cannot be superseded by any of their fellows, but only by writ out of chancery. 2 *Haw. c.* 8. § 43.

But it is not sufficient that the precept run under the name of the *custos rotulorum* alone; for he hath no more authority in this behalf than any one of his fellow-justices; and the words of the commission are, that the sheriff shall cause a jury to appear at such days and places as the said justices, or such *two or more of them* as aforesaid, shall appoint. *Lamb.* 382.

Mr. *Lambard* puts a case from Mr. *Marrow*, That if two or more justices appoint the sessions to be holden in one town, and so many more appoint a sessions in another town the same day, and holds they may be so held, and that the presentments in both are good; but that appearance at one is a discharge of service at the other. But it may be well questioned whether they are not both void; for they make two courts of that which ought to be entire and but one; for it doth not appear that the justices are required or enabled to hold more than one sessions at a time, and so their authority being equal, and seeing no prefer- Two places.

The magistrates at large being informed of this course of proceeding, will of course make their commitments and take recognisances so as to answer the exigencies of each case, according to the time when the offences are committed, and of the adjournment of the sessions for the purpose of trying them; and as to the summoning of witnesses who have not entered into recognisances to appear, the power is the same to summon them for the day of the adjournment as it is for the original day of holding the general quarter sessions.

" We are therefore of opinion it will be advisable for the justices to hold the general quarter sessions by adjournment, for the trial of felonies and other offences triable at a general quarter sessions.

" S. SHEPHERD.
" R. GIFFORD."

" *Serjeants' Inn*, 9*th June*, 1819.

ence can be made by the priority of time, or nature of the service, they may be taken to be both void. However, the justices, by whose forwardness such division happens, or on whom such miscarriage is chargeable, are punishable for the same by information and fine, or being put out of the commission, as the cause shall require. *Dalt. c.* 185. *p.* 457.

Proceedings of justices should be decorous.

Indeed, it is of infinite importance that the proceedings of magistrates should not only be substantially good, but also that they should be decorous. Wherefore, where two sets of magistrates have concurrent jurisdictions, and one appoint a meeting to grant ale licences, their jurisdiction attaches so as to exclude the others appointing a subsequent meeting; but they may all meet together on the first day. But if after such appointment the other set of magistrates meet on a subsequent day, and grant other licences, their proceeding is illegal, and the subject of an indictment. *R.* v. *T. Sainsbury*, esq. *and Another*, 4 *T. R.* 451.

Persons who are to appear there.

The persons who ought to appear at these sessions are as follows;

Justices.

(1) The *justices of the peace;* these without doubt are compelable to appear at the sessions: for without their appearance the sessions cannot be holden. *Dalt. c.* 185. *p.* 457.

Justices being interested.

But a justice ought not to join in an order at sessions wherein himself is concerned, nor ought his name to be in the caption. An order was quashed for that reason. 2 *Salk.* 607.

Custos rotulorum.

(2) The *custos rotulorum,* who hath custody of the rolls of sessions, ought (by the commission) to be there by himself, or by his deputy, who is the clerk of the peace. *Dalt. c.* 185. *p.* 458.

Sheriff.

(3) The *sheriff* also, by virtue of the commission, by himself or his deputy; to receive the fines, or return jurors, to execute process, and what else to his office doth appertain. *Id.*

Coroners.

(4) All *coroners. Id.*

High constables.

(5) The *constables of hundreds,* (that is, high constables,) and all other officers to whom any warrant hath been directed, in order to make return thereof. *Id.*

Bailiffs.

(6) All *bailiffs of hundreds and liberties,* in respect they are bound to give an account of all sessions' process. *Id.*

Gaoler.

(7) The *gaoler;* to bring thither his prisoners, and to receive such as may be committed. *Id.*

Keeper of the house of correction.

(8) The *keeper of the house of correction,* to give in a calendar and account of persons in his custody. *Id.*

Persons returned by the sheriff

(9) All persons returned by the sheriff, by virtue of the aforesaid precept. And the jurors not appearing according to their summons are punishable by loss of issues, which usually make part of the estreats of sessions. *Id.*

Or by recognisance.

(10) All persons returned by *recognisance* to answer, or to prosecute and give evidence. *Dalt. c.* 185. *p.* 458.

Freedom of access to the sessions.

All persons may freely attend at the sessions for the advancement of public justice, and for the service of the king. And to this end they are (as it were) invited thither by a certain freedom of access, and by protection from common arrest: a thing that is incident to each court of record, and without which justice would be greatly hindered. So that if a man come voluntarily to the sessions, either to prefer a bill of indictment, or to give in-

formation against another, or to tender a fine upon an indictment touching himself; or do come compelled to make appearance for saving his recognisance, and be arrested by the sheriff upon common and original process in his coming thither, or during his tarrying there, it seemeth (Mr. *Lambard* says) that (upon examination of the matter under his oath) he shall be discharged thereof by the privilege of this court, even as it is used in the higher courts at *Westminster*. *Lamb.* 402.

But Mr. *Hawkins* puts it more doubtfully, saying, it is questioned whether the sessions, as also all courts of record, may not discharge any person arrested during his journeying to or from such courts, or necessary attendance there, by process from any other court: however it seems to be agreed that any such court may discharge a person who shall be so arrested in the face of it. 2 *Haw. c.* 1. § 19.

But now no doubt can be entertained on the subject; and this privilege is so incident to the duty of attendance on judicial proceedings, that it has been construed to extend to the case of a party to a cause attending an arbitrator to be examined under an order of nisi prius made a rule of court. *Spence* v. *Stuart*, Bart. 3 *East*, 89.

On general principles, this privilege from arrest, *eundo morando, et redeundo,* applies to the case of every person in necessary attendance on a court of justice; and for this purpose the sitting of commissioners of bankrupt or of an arbitrator is so deemed. 8 *T. R.* 534.

And it seemeth to have been agreed in the argument upon Col. *Pitt*'s case, 2 *Str.* 987. (which was an arrest in his return from parliament), that not only in the high court of parliament, but also in the inferior courts, the parties to the suit, and also the witnesses, are protected in going, continuing, and returning. This returning hath never been very nicely scanned, so as to require a man to go the direct road. Neither is the law so strict in point of time as to require a person to set out immediately after the trial is over; and for that was cited the case of *Hatch* v. *Blisset*, *T.* 13 *An.* She had a trial at *Winchester* assizes, which was over on *Friday* at four in the afternoon; she staid there till after dinner on *Saturday;* and in the evening at seven was arrested going home to *Portsmouth*, which is 20 miles: and the court held, that she ought to be discharged, her protection not being expired, and a little deviation of loitering would not alter it.

But where a man is arrested by process out of the courts at *Westminster*, it doth not seem that the justices of the peace (unless the arrest is made in the sessions) have power to discharge him; but, on application to the court from which the process issued, such court probably may discharge him, and punish the person who made the arrest.

22 G. 2. c. 46. Who shall act in the sessions as solicitor.

By stat. 22 *G.* 2. *c.* 46. § 12. No person shall act as solicitor, attorney, or agent, or sue out any process at any general or quarter sessions, either with respect to matters of a criminal or a civil nature, unless he is admitted and enrolled according to law on pain of 50*l.* to him who shall sue in 12 months, with treble costs; and if any attorney shall permit any person to make use of his name in the said court he shall in like manner forfeit 50*l.*

22 G.2. c.46. § 14. And no clerk of the peace, under-sheriff, or their deputies, shall act as solicitor, attorney, or agent, or sue out any process at such sessions, on the like pain of *50l.*

§ III. Manner of proceeding at Sessions.

Manner of proceeding in sessions.

The manner of proceeding at the sessions is as follows; first, the justices being met, the cryer makes the following proclamation, *Oyez, oyez, oyez, all manner of persons who have any thing to do at the general quarter sessions of the peace for this county, draw near, and give your attendance.*

He then calls upon the sheriff thus: *Sheriff of this county, return the several precepts to you directed, and returnable here this day, that his majesty's justices may proceed thereon;* which is accordingly done.

The clerk of the peace then calls the high constables, bailiffs, &c.

Grand jury sworn.

The grand jury are next called and sworn.

The king's proclamation against vice, &c. is then read.

Acts to be read.

There are likewise divers acts of parliament which are *directed* to be read in the sessions, viz. the 5 *El. c.* 1. against popery,— the Riot Act, 1 *G.* 1. *c.* 5.—the Black Act, 9 *G.* 1. *c.* 22.—the 11 *&* 12 *W. c.* 15. about ale measures. The 4 *&* 5 *W. c.* 24., 7 *&* 8 *W. c.* 32., 3 *&* 4 *An. c.* 18. and 3 *G.* 2. *c.* 25., concerning jurors, are to be read in *Midsummer* sessions yearly. And the

2 G.2. c.24.

2 *G.* 2. *c.* 24. against bribery and corruption in the election of members of parliament is to be read at every *Easter* sessions. But the reading of these acts is now generally discontinued.

Charge to grand jury.

Proclamation is then made to keep silence while the charge is given to the grand jury.

25 C.2. c.2. Qualification oaths in offices.

By stat. 25 *C.* 2. *c.* 2. § 2. The qualification oaths for offices must be taken between the hours of 9 and 12 in the forenoon,

59 G.3. c.28.

The business of the sessions is then proceeded in according to the rules of the courts of the respective counties, and the dispatch of which is now greatly facilitated by stat. 59 *G.* 3. *c.* 28. "to empower magistrates to divide the court of quarter sessions:"

Courts of quarter sessions or general sessions of the peace may appoint two or more justices to form a court to sit apart from them.

That act directs, "that whenever and as often as any court of quarter session or general session of the peace shall be assembled for the dispatch of business thereunto belonging, the justices then present may on the first day of their being so assembled take into their consideration the state of the business likely to be brought before them at such quarter session or general session; and if it shall appear to them that such business, if heard and determined by the whole court, is likely to occupy more than three days, including the day of their being so assembled, it shall and may be lawful for the said justices to apppoint two or more justices, one of whom shall be of the *quorum*, to sit apart from themselves in some place in or near the court, there to hear and determine such business as shall be referred to them, whilst others of the justices are at the same time proceeding in the dispatch of the other business of the same court; and that the proceedings so had by and before such two or more justices so sitting apart shall be as good and effectual in the law to all intents and purposes as if the same were had before the court assembled and

sitting as usual in its ordinary place of sitting, and shall be enrolled and recorded accordingly." 59 G.3. c.28.

Regulations made for the apportionment of business need not be renewed at each succeeding session.

§ 2. Provides and enacts, "that when two or more justices shall have sat apart in manner before directed by this act, and orders, rules, and regulations shall have been made for the apportionment of business, such orders, rules, and regulations shall remain and continue in force as long as shall be thought expedient without the necessity of renewing such orders, rules, and regulations at each succeeding session, to the intent that the same may become public and better known to all professional and other persons engaged in or in any manner interested in the business of such quarter session."

Clerk of the peace to appoint a person to record the proceedings of such separate court.

§ 3. Enacts "that the clerk of the peace or his deputy (wherever two or more justices shall sit apart at any quarter session) shall be authorised and required to appoint a fit and sufficient person to record the proceedings so had before the justices sitting apart; and such proceedings shall be delivered over to the clerk of the peace, or his deputy, and shall be equally deemed to be a part of the records of such session, as if the same proceedings had been recorded by the clerk of the peace himself; and it shall be lawful for the justices assembled at the quarter session to make an order upon the treasurer of the county to pay to the clerk of the peace such sum or sums of money as they shall deem a fit and reasonable remuneration to the clerk of the peace for such purpose as aforesaid; and it shall be lawful for such justices to appoint an additional cryer, and to grant him such remuneration for his care and pains as they shall deem reasonable, which shall in like manner be paid by the treasurer of the county."

Of the Trial for Offences.

Trial for petit larceny and other offences.

The court of quarter sessions has, by the express terms of their commission, jurisdiction over all felonies, and it appears now to be the uniform practice throughout *England*, to try all simple larcenies in this court, murders, burglaries, and all capital offences, being usually reserved for a more solemn investigation at the assizes; but the sessions appear to have jurisdiction over even capital offences of this nature; though, in consequence of the caution expressed in the commission (vide Vol. III. tit. Justices.) not to proceed to judgment in cases of difficulty, they do not ordinarily proceed to try them; but if the sessions do proceed to judgment in cases of difficulty, their judgment is not void, but is effectual till reversed for real error by a superior tribunal. *Lamb.* 50. 2 *Hale*, 46.

The sessions have no jurisdiction over any new-created offences (*e.g.* usury, *R.* v. *Smith*, 2 Ld. *Raym.* 1144. 1 *Bla. Rep.* 369. *S. C.*) nor have they over forgery or perjury at common law. *R.* v. *Gibbs*, 1 *East*, 173. *Reg.* v. *Yarrington*, 1 *Salk.* 406. 2 *Haw. c.* 8. § 38. 1 *Chitt. Crim. L.* 139.

The general words in the commission of the peace comprehend all trespasses: and the word "*trespasses*" in the commission (subject to three exceptions) not only includes direct breaches of the peace, but also all such offences as have a tendency thereto; and on that ground conspiracies have been holden to be cognisable by the sessions: not as actual breaches of the peace, but as tending

thereto. Per *Le Blanc* J. *R.* v. *Higgins*, 2 *East*, 23., in which case it was holden, that to solicit a servant to steal his master's goods, is an offence indictable in this court.

Arraignment. Humanity towards the prisoner.

Mr. *Hawkins* observes, that every person at the time of his arraignment ought to be used with all the humanity and gentleness which is consistent with the nature of the thing, and under no other terror or uneasiness than what proceeds from a sense of his guilt, and the misfortune of his present circumstances, and therefore ought not to be brought to the bar in a contumelious manner, as with his hands tied together, or any other mark of ignominy and reproach; nor even with fetters on his feet, unless there be some danger of a rescous or escape. 2 *Haw. c.* 28. § 1.

And the court ought to exhort him to answer without fear, and to acquaint him that he shall have justice done to him. 2 *Inst.* 316.

Holding up the hand.

After the delivery of the bills of indictment in court by the grand jury, one of the prisoners is put to the bar, and the clerk of the peace says to him, A. B. *hold up your hand.*

[Yet it is not necessary that he hold up his hand at the bar, or be commanded so to do; for this is only a ceremony, for making known the person of the prisoner to the court, and if he answer that he is the same person, it is all one. 2 *Haw. c.* 28. § 2.]

Cul. prist.

You stand indicted by the name of A. B., *late of, &c. for that you, &c.* [reciting the indictment]. *Are you guilty or not guilty of this felony?* If he say not guilty, the clerk of the peace then joins issue *cul. prist.* and says, *How will you be tried?* (which was formerly an important question, because trials by battle and ordeal were then in use, as well as by the country or a jury,) to which the prisoner answers, *By God and my country*, and the clerk of the peace then says, *God send you a good deliverance*, and writes over his name *po. se.* and so proceeds with the other prisoners, until he shall have arraigned a sufficient number, when he calls the jury thus: *You good men who are impannelled to try the issue joined between our sovereign lord the king and the prisoners at the bar, answer to your names.*

Po. se.

Jury called over.

When the jurors have appeared, the clerk of the peace calls to the bar all the prisoners who have pleaded not guilty, and says to them, *These good men who shall be next called, are those who are to pass between our sovereign lord the king and you, upon your respective trials. If, therefore, you or either of you will challenge them, or any of them, you must challenge them as they come to the book to be sworn, before they are sworn, and you shall be heard.*

Jury challenged.

Jury sworn.

The clerk of the peace then calls the jury severally, and the cryer swears them as follows: *You shall well and truly try, and true deliverance make between our sovereign lord the king and the prisoner at the bar, whom you shall have in charge, and a true verdict give according to the evidence; So help you God.*

Jury counted.

The cryer then counts the jurors as the clerk of the peace reads their names, and asks them if they are all sworn. All the prisoners, except one to be tried, are then put from the bar, and the clerk of the peace charges the jury as follows: *The prisoner at the bar stands indicted by the name of* A. B. (reading the indictment, as upon the arraignment,) *upon this indictment he has been arraigned, upon his arraignment has pleaded not guilty, and for his trial has put himself upon God and his country, which country you*

Jury charged.

are. Your charge, therefore, is to enquire whether he be guilty of the felony whereof he stands indicted, or not guilty, and to hearken to the evidence.

The witnesses, as well for the king as the prisoner, are then sworn thus: *The evidence you shall give to the court and jury sworn, between our sovereign lord the king and the prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth; So help you God.* **Witnesses sworn.**

When the jury shall have agreed, the clerk of the peace asks them, *Are you agreed on your verdict? do you find the prisoner guilty of this felony whereof he stands indicted, or not guilty?* The verdict having been given, he records it, and says, *Hearken to your verdict as the court recordeth it: you say* A. B. *is guilty of the felony whereof he stands indicted; this is your verdict, and so ye say all.* **Verdict.**

If he answer that he is guilty, then the confession is recorded, and no more done till judgment. *Dalt. c.* 185. p. 459. **Confession**

If he make no answer at all, and will not plead, he shall have the same judgment as if he had confessed the indictment. 12 *G.* 3. *c.* 20. 2 *Haw. c.* 30. § 10. See also Vol. III. tit. Mute. **Standing mut**

The plea of *auterfoits acquit* cannot be pleaded, unless the facts charged in the second indictment would have sustained the first indictment. *R.* v. *Vandercom & Abbott, O. B.* 1796. 2 *East's P. C.* 519. **Pleading.**

If the prisoner has any matter to plead, either in abatement or bar of the indictment, as *misnomer, auterfoits acquit, auterfoits convict*, a pardon, &c. he shall plead it upon arraignment, without answering to the felony. 2 *Hale*, 219.

On indictments of treason or felony, the prisoner shall not have counsel allowed to him, unless a point of law arise, proper to be debated; nor a copy of the indictment. 2 *Haw. c.* 39. § 2. 13. **Prisoner not to have counsel in treason or felony.**

But in offences under felony, a defendant may be heard by his counsel. *Wood's Inst. B.* 4. *c.* 5.

And of late years the judges never scruple to allow the prisoner counsel to instruct him what questions to ask, or even to ask questions for him, with respect to matters of fact. 4 *Blac. Com.* 356.

And at this day it is the practice never to object to the allowance of counsel, if the prisoner can procure them. If there be none other, the court is to be of counsel with the prisoner, and ought to advise him for his good, and not take advantages too strictly against him. *Dalt. c.* 185. *p.* 460. **Court to be of counsel with him.**

Upon the trial of issues which do not turn upon the question of guilty or not guilty, but upon collateral facts, prisoners under a capital charge, whether for treason or felony, always were entitled to the full assistance of counsel. *Fost.* 232—242.

If the jury cannot agree on their verdict at the bar, a bailiff must be sworn to keep the jury thus: *You shall swear that you shall keep this jury without meat, drink, fire, or candle; you shall suffer none to speak to them, neither shall you speak to them yourself, but only to ask them whether they are agreed; So help you God. Dalt. c.* 185. *p.* 460.

The jury coming back, the prisoner is brought to the bar; the names of the jury are called over and the verdict taken as before. *Dalt. c.* 18. *p.* 460. **Verdict.**

Judgment. Sentence is then passed.

Verdict quashed and prisoner found guilty by another jury, judgment may be given. If a criminal court quash a verdict of guilty, and the party is again found guilty by another jury, judgment shall be given; for if the court were incompetent to quash the first verdict, that shall be considered as standing; if they were not incompetent, the second is unobjectionable. *R.* v. *Fowler and Sexton, H.* 1 & 2 *G.* 4. 4 *B.* & *A.* 273.

And the party need not be arraigned *de novo* on the second trial, for the prior arraignment and plea stand. *S. C.*

Juror separating before verdict; new trial; award, &c. on verdict of guilty; judgment given. Vide ante. On indictment for larceny, at the sessions, the prisoners were found guilty, but it appearing that one of the jurors had separated from the others before the verdict was given, the court quashed the verdict, awarded a jury for the next sessions, and then again tried the prisoners, when they were again found guilty, and sentence was pronounced. On writ of error, two objections were urged: one, that the sessions could not grant a new trial; the other, that there should have been a new arraignment and plea. *Sed per Curiam.* As nothing but the first verdict was set aside, the prior arraignment and plea stood, and if the court could not grant a new trial, the first verdict must be considered as standing; and upon one or other of the verdicts the judgment must be good. Judgment affirmed. *S. C. ibid. and MS.*

Publication of proceedings. A court of gaol delivery may prohibit publication of the proceedings pending a trial. *R.* v. *Clement,* 4 *B.* & *A.* 218.

Power to fine. "No lawyer can doubt the power of every court to fine for contempt." *Per Abbott* C.J. *R.* v. *Davison,* 4 *B.* & *A.* 334.

Of the Trial of Traverses.

Traverses tried. Then may be called the persons bound by recognisance at the last sessions, to prosecute their traverses at the present sessions. For if a person indicted for an assault or misdemeanor do appear, and plead not guilty, and traverse the indictment, he shall enter into recognisance to prosecute his traverse at the next quarter sessions. For in *Bumpsted*'s case, *Cro. Car.* 448. the whole court was of opinion, that justices of the peace may not enquire, try, and determine civil offences, in one and the same day; for the party ought to have a convenient time to provide for the trial.

Persons in custody for a misdemeanor, are not in general tried until after the felonies.

Before a defendant can be tried on any traverse, he must procure from the clerk of the peace a record of the proceedings, and a *ven. fa.* which he must get returned by the under-sheriff, and he must afterwards enter his traverse with the clerk of the peace.

Where a defendant is not in custody, he cannot be tried at the same session at which the bill for an assault or misdemeanor shall have been found, unless by the consent of the prosecutor, or under stat. 60 *G.* 3. and 1 *G.* 4. *c.* 4., for which see tit. Traverse, *post.*

And on the trial of a traverse, the defendant must appear in the court, at the bar, in his proper person; and then the indictment is read to the jury: and the prosecutor and his witnesses are called to give evidence, and are heard: and if the defendant be found

guilty the court sets a fine upon him adequate to the offence, or other punishment as the law directs.

In cases of assault, the court frequently recommends the defendant to talk with the prosecutor, that is, to make him amends for the injury done him; and if the prosecutor come and acknowledge a satisfaction received, the court will set a small fine on the defendant. *Vide* 4 *Bla. Com.* 363, 364.

Sometimes the prosecutor and defendant agree before the defendant pleads to the indictment; and then the defendant comes into court in his proper person, and pleads guilty to the indictment; and upon proving, by a subscribing witness, a general release executed by the prosecutor, the defendant submits to a small fine, such as the court is pleased to impose. *Cro. Cir. C.* 21.

There are frequent prosecutions at the sessions for trifling assaults; in which case it is advisable for a defendant, not to put himself to the expense of trying the indictment, but to give notice to the prosecutor that he intends to plead guilty to the indictment; in which case the prosecutor attends the court with his witnesses, and gives evidence of the nature of the offence; and then the court proceeds to fine the defendant: but the court will admit the defendant to call such witnesses as he desires, and will examine them by way of mitigation. *Cro. Cir. C.* 22.

Proceeding in hearing Appeals, &c.

Upon hearing of appeals, the first step in all cases after the appeal is called on is, that the appellant should prove his notice, unless it be admitted. 2 *Nol. P. L.* 439. 3*d Ed.*

The notice of appeal is the only instrument which brings the appeal before the court of quarter sessions; and if required to be in writing it should be accurately drawn. Where a statute requires reasonable notice to be given, it does not necessarily mean that the notice should be in writing, but only that as to time and number of days it should be reasonable. *Per Abbott* C. J. *R.* v. *Justices of Surry*, Vol. I. tit. Appeal. (*Notice.*)

In appeals against orders of removal, the respondent begins; the appellant must produce the pauper, and also the original orders of removal. But it is the safest practice to subpœna paupers as witnesses, where they are to be used as such.

If only a copy of the order is served, the appellants should give notice to the removing parish, to produce the original at the hearing.

If the pauper cannot be found, and the order appear upon the face of it to have been made on his examination upon oath, the appellant begins. 2 *Nol. P. L.* 440. *n.* (4). 3*d Ed.*

Upon an appeal against an order of filiation, the respondents are to begin by supporting their order. *R.* v. *Knill*, 12 *East*, 50.

If a party appeal against a poor-rate on the ground that he has not rateable property in the parish, the respondents must first establish their case. *R.* v. *Newbury*, M. 32 *G.* 3. 4 *T. R.* 475.

Heywood, amicus curiæ, said, that at the *Yorkshire* quarter sessions, when the appellant objected to his being rated at all, it is the practice for the respondents to begin; but if he object to the *quantum* of the rate, then the *onus* lay on him.

Ld. *Kenyon* C. J. said, that "in writs of error and appeals to the house of lords, where each party is in possession of all the evidence on both sides, the party who impeaches the decision below, always begins; but in a case of this kind, where it is an *ex parte* proceeding, and where the appeal comes on to be heard naked and destitute of all evidence before the court, those who have done the act ought to establish the propriety of it by evidence. 4 *T. R.* 476.

5 G. 2. c. 19. Errors in form to be amended.

By stat. 5 *G.* 2. *c.* 19. Upon all appeals to be made to the sessions against judgments or orders, the justices shall cause any defect of form in such original judgment or orders, to be rectified and amended, and then shall proceed upon the merits.

Form, what it is.

Form is such matter of course as the clerk may supply and amend, without any information of the party. The power given by stat. 5 *G.* 2. *c.* 19. is confined entirely to the amendment of defects or mistakes of form, which appear upon the face of the order. 2 *Nol. P.L.* 451. 3*d Ed.* See *R.* v. *Inhab. of Great Bedwin, Burr. S. C.* 163. *et per* Lord *Kenyon* C. J. *R.* v. *Chilvers Coton*, 8 *T. R.* 178.

§ IV. Of the Power of the Sessions; as, In what Matters.

The sessions may do what two justices may.

Where authority is given to two justices to do any act, the sessions may do it in all cases, except where appeal is directed to the sessions. *Per Holt* C. J. 1 Ld. *Raym.* 426.

But the sessions cannot suppress a licensed alehouse, unless for disorder. *R.* v. *Randall*, 2 *Salk.* 470.

Sessions to proceed by indictment.

If jurisdiction be given to the sessions to hear and determine, and doth not say by information, this shall be by indictment, and not upon information. *Dalt. c.* 191. *p.* 469.

Where a power is given to a jurisdiction, which does not ordinarily entertain actions, bills, or plaints, in general terms *to inquire of, hear and determine* the offence, it must be understood to mean by the common law mode of proceeding, viz. by indictment or presentment. *Shipman* q. t. v. *Herbert*, 4 *T. R.* 109.

Whether they may issue a *capias utlagatum.*

The sessions may proceed to outlawry in cases of indictments found before them; and that by the common law; and in cases of popular actions, by stat. 21 *J. c.* 4. But they cannot issue a *capias utlagatum*, but must return the record of the outlawry into the K. B., and there process of *capias utlagatum* shall issue. 2 *Hale*, 52. *Lamb.* 521. *Dalt. c.* 193. *p.* 473.

But they that have power to award process of outlawry have also a power to award a *capias utlagatum*, as incident to their authority and jurisdiction. 12 *Rep.* 103.

Whether they may award an attachment.

The sessions cannot award an attachment for contempt in not complying with their orders; but the ordinary and proper method is by indictment. *R.* v. *Bartlett*, 2 *Sess. Ca.* 176.

Need not give their reasons.

The sessions are not obliged to give any reason of their judgment in the orders they make, no more than any other of the courts of law. 2 *Salk.* 607.

Orders may be altered the same sessions.

The sessions is all as one day, and the justices may alter their judgments at any time whilst it continues. *Per Holt* C. J. 2 *Salk.* 606. 2 *Nol. P.L.* 443. 3*d Ed.* 1 *Str.* 383.

R. v. *the Just. of Westmorland,* 2 *Sess. Ca.* 193. Order of two justices of the borough for removing a poor family; appeal to the sessions of the county, at which the justices were equally divided; so no determination was made, nor the appeal adjourned. A *mandamus* was directed to all the justices of the county in general to proceed on the appeal. And it was said that the justices ought in this case to have adjourned the appeal, or continued it over to a subsequent sessions, till, by the coming of more justices, it might have been determined.

Where they are equally divided in opinion, that is a sufficient warrant for the clerk of the peace to enter an adjournment, and it is his duty so to do. *Bodmin* v. *Warligen,* 2 *Bott,* 733. 2 *Nol. P. L.* 436. 3*d ed.*

Power to adjourn an appeal properly lodged.

An inclosure act gave the parties aggrieved a right of appeal to any quarter sessions to be holden for the county of *Wilts* "within four calendar months after the cause of complaint shall have arisen;" and enacted, "that the justices at the said general quarter sessions are hereby required to hear and determine the matter of every such appeal," &c. *Per* Ld. *Ellenborough* C. J. "I hold, without any doubt, that the court who are to try the appeal have an incidental authority to adjourn it when once properly lodged, if it be necessary for the advancement or convenience of justice: and the sessions are to judge of the proper occasion for doing so. But the act of the party himself in preferring his appeal, must be within the limited time." *R.* v. *Justs. of Wilts, H.* 51 *G.* 3. 13 *East,* 352.

R. v. *Houldgrave, H.* 58 *G.* 3. 1 *B. & A.* 312. The justices in sessions have no power to order a sum to be paid by the bridgemaster to the clerk of the peace in lieu of all fees; they can only direct a compensation for business done, but not substitute an average computation.

The sessions have no jurisdiction to make a *prospective* order for a compensation *thereafter* to be made to the clerk of the peace; and, therefore, where a county treasurer, in obedience to such an order, made the payment, and that payment was afterwards, by an order of sessions, allowed in his accounts, the court of K. B. quashed so much of the order of sessions as allowed that *item.*

R. v. *George Williams,* Esq., *M.* 60 *G.* 3. 3 *B. & A.* 215. At the annual general sessions of the peace for the county of *Lancaster,* holden at *Preston,* on the 25th *June,* 1818, the court of quarter sessions allowed the treasurer's accounts, on the debtor side of which was the following item: "To the clerk of the peace — his fees on rolls issued in *April, July,* and *October,* 1817, and in *January,* 1818, 35,589*l.* 17*s.* at 1*s. per* pound, 148*l.* 5*s.* 8*d.*" The order of sessions having been removed into this court by *certiorari, Parke* obtained a rule *nisi* for quashing so much of it as related to the above *item,* on an affidavit stating, that such allowance had been made, not upon an estimate of the labour of the clerk of the peace, but on a calculation of poundage on the sums estreated by the rolls issued. In answer to this, the affidavits stated an order of sessions, dated 4th *December,* 1815, which was as follows: "That the clerk of the peace be allowed one penny in the pound on all sums raised by virtue of the said new assessment, in lieu of his usual fees heretofore taken for making the rates and for the rolls, exclusive of all charges and expences in printing and preparing the said rolls, which he is hereby directed to charge in his annual accounts." On shewing cause it was contended, that stat. 55 *G.* 3. *c.* 51. gave a jurisdiction, in cases like this, to the magistrates; for § 16. enabled them to make compensation to all their officers, and their jurisdiction was not denied in *R.* v. *Houldgrave,* 1 *B. & A.* 312.; but there the order

Rex v. Williams, Esq.

was before the court, and it appeared that the justices had made a vicious computation. *R.* v. *Inhab. of Essex*, 4 *T. R.* 591. was also cited. *Contra* it was argued, that the 55 *G.* 3. *c.* 51. § 16. gave no jurisdiction to the magistrates to make a compensation to the clerk of the peace; for the officers enumerated are all of an inferior description; and the general words at the end, must be construed with reference to the officers enumerated. Besides, at all events, the order of *December*, 1815, was bad on the face of it; for it was a general order, and prospective, and the justices have no power to make a prospective order: if so, the treasurer ought not to have obeyed it. *Abbott* C. J. This case has come before the court rather in an imperfect manner. It appears, however, to stand thus: By an order, made *June* 25th, 1818, the treasurer's accounts for the county of *Lancaster* were allowed at the annual general sessions, by the magistrates there assembled. That order has been brought up into this court by *certiorari*, and a motion has been made to quash such part of the order as allows the sum of 148*l.* 5*s.* 8*d.* to the treasurer. That motion is supported by an affidavit, stating, that the allowance was made, not upon any calculation of the work done by the clerk of the peace, but by a poundage upon the sums levied under the rate. On the other side, an order of sessions, dated 4th *December*, 1815, is produced, by which this poundage was allowed; and, supposing that order to have been made by a competent tribunal, I might, perhaps, think that that order ought to have been removed into this court before we could proceed to quash the part of the present order before referred to, inasmuch as the treasurer would be warranted in making such payment, in obedience to the order of *December*, 1815. But I am of opinion, that the sessions have no jurisdiction to make a prospective order of this sort, for an allowance to the clerk of the peace by way of poundage. And if that order was made by a tribunal which had no such jurisdiction, the payment by the treasurer was without authority, and ought not to be allowed in his accounts. It has been ingeniously put in argument, that the order in 1818, after the work had been done by the clerk of the peace, may be considered as an original order, by the court making him a proportionate allowance for his trouble. But, I think, that it is impossible so to consider it. In the first place, it is not the ordinary course of proceeding to make such an original order at the time of examining the treasurer's accounts. The magistrates, upon that occasion, only examine whether he has properly given credit for the sums received by him, and that the sums stated to be paid by him are properly vouched. In the second place, it is to be observed, that the voucher for this individual payment, which is here returned with the order of sessions, shews most manifestly, that this sum was paid by virtue of the order of *December*, 1815. It is impossible, therefore, to consider the order of *June*, 1818, as an original and substantive order; or, indeed, as any thing else than an order allowing an account expressly founded on the order of *December*, 1815, which, it appears, was made by a court wholly without jurisdiction. I am, therefore, of opinion, that that part of the order of sessions, making allowance to the clerk of the peace, should be

quashed. *Bayley* J. and *Holroyd* J. concurred. — Order of sessions quashed.

Of the Judgments at Sessions.

In *R.* v. *Harding*, 2 *Salk.* 477. It is delivered as the resolution of the court, that a judge of *nisi prius*, by consent of parties, may make a rule to refer a cause; but the sessions cannot do so, though by consent. They may refer a thing to another to examine, and make report to them for their determination, but cannot refer a thing to be determined by the other. Whether the sessions can refer a matter.

But in *R.* v. *the Justs. of Northampton, Cald.* 30. On a motion to quash an order of sessions quashing a poor-rate, on the ground that the rate was by the sessions referred to two justices out of sessions, and that the sessions afterwards adopted their opinion, without exercising their own judgment; Ld. *Mansfield* said, " If they did this of their own accord, without the consent of the parties, it cannot be supported: they are not warranted to delegate their authority: but, if they acted with the consent of the parties, I think they have done very right; and we will never suffer the party who consented to the reference to come here to set it aside; and I think it sufficient if the attornies consented, and attended at the reference. The case was sent back to the sessions to certify whether it was referred by consent; and afterwards the order was affirmed.

A bill of exceptions will not lie to the justices in sessions on an appeal; for, as observed by Ld. *Hardwicke* in the common case of bills of exception tendered to the judges, the jury alone are the proper persons who would be to decide whether they believe the evidence or not; the judges have nothing to do with the belief of the evidence; they are not to determine on its credibility, but on the consequence of law arising from it. But the justices at sessions are judges of the fact as well as law; they are jury as well as judges; it is in their breast only whether to believe or disbelieve the evidence; and who is to take upon himself to say what portion of the evidence they do believe, and what they do not? Suppose six of the justices believe the evidence, and two of them do not believe it, are the two to conclude the six as to the belief of the fact? When the justices specially state the fact, it is the act of the whole court; but here only two out of the whole number have sealed the bill of exceptions. *R.* v. *Preston, Burr. S. C.* 77. Bill of exceptions will not lie.

Rex v. *Justs. of Leicestershire, E.* 53 *G.* 3. 1 *M.* & *S.* 442. The court will not grant a *mandamus* to the justices at sessions to rehear an appeal against an order of removal after judgment given by them, and entered by the clerk of the peace, for quashing the order, upon the ground that the justices at sessions were divided in opinion, and that the judgment was entered by mistake instead of an adjournment of the appeal. Wrong entry of judgment by mistake and not corrected during the sessions, no ground for a re-hearing.

The justices at sessions may alter their judgment during the continuance of the sessions.

Rex v. *the Just. of Salop,* 2 *B.* & *A.* 694. A rule *nisi* had been obtained for a *mandamus* to the sessions to enter continuances, and hear the appeal of *John Rogers*, against the con- Where a statute gives a party aggrieved

Rex v. Just. of Salop.

a right of appeal, on giving security to a specified amount, he may enter and respite his appeal at the next sessions after having given such security, without notice to the other side; but after the appeal has been respited, if he does not give the usual notice of trying it, the sessions will be authorised to dismiss it altogether.

viction of a magistrate, under stat. 52 *G.* 3. *c.* 93. *sched.* L. *rule* 12. The defendant was convicted in the penalty of 10*l.* for using greyhounds for the purpose of killing a hare, not having taken out a certificate. Immediately upon his conviction he entered into the recognisance required by the act, to prosecute his appeal against it. At the next sessions he accordingly entered his appeal, and it was respited by the court. At the following sessions he again appeared for the purpose of trying the appeal; but it being objected that there had not been eight days' notice given to the convicting magistrate, as required by the rule of the sessions, the magistrates dismissed the appeal, and confirmed the conviction. On moving for the rule *nisi*, the case of *Rex* v. *the Justices of Leeds*, 4 *T. R.* 583. was relied on, and it was contended, that the entering into the recognisance before the magistrate dispensed with the necessity of giving the usual notice to him of trying the appeal. After cause shewn against the rule, *Abbott* C. J. said, it was, perhaps, sufficient for the party to entitle himself to enter his appeal at the *January* sessions, that he had given the security required by the act, although no notice of appeal had been given by him; but when once he had entered his appeal, he was bound to conform to the practice of the sessions. It was therefore necessary for him to have given the usual notice of trying his respited appeal at the *Easter* sessions; and not having done so, the magistrates were authorised to dismiss the appeal altogether. R. D. with costs.

Rex v. *the Just. of Carnarvon*, 4 *B. & A.* 86. The court of K. B. has no jurisdiction to review the judgment of the quarter sessions, except in a case sent up for their consideration. See Vol. III. *tit.* Mandamus.

Of stating a Special Case.

Sessions stating a special case.

The sessions cannot be compelled to state a special case. Nor will the court permit them to raise a *general question*, by omitting to state particular circumstances belonging to the case. But if the sessions order a special case to be made, and before it is settled the sessions is inadvertently adjourned, the court of K. B. will grant a *mandamus* to compel them to proceed in the appeal. *R.* v. *Oulton*, 2 *Bott.* 73. *R.* v. *Francis Hill*, 1 *Bott.* 280. *R.* v. *Justs. of Sussex*, 2 *Bott.* 751.

" The magistrates ought not to be induced to send up cases for our opinion, if they have no doubt upon the question in their own minds, in order to avoid incurring unnecessary expences." *Per Bayley* J. *R.* v. *Inhab. of Darley Abbey*, 14 *East.* 285.

The sessions should not grant cases unless they entertain *serious* doubts. *Per Bayley* J. *R.* v. *Burbach*, 1 *M. & S.* 376.

The court will not send a case down to the sessions to be re-stated on a mere formal objection, if enough appear to enable them to decide according to the merits of the case. *R.* v. *Inh. of Middlezoy*, 1 *T. R.* 41.

If a special case be sent back to be re-stated, the sessions should proceed as if it were an entirely new business; for it is in the nature of a new trial; wherefore they have no right to take any notice of what passed before. *R.* v. *Page*, 2 *Bott.* 743.

But the sessions, in order to re-state a case, are not necessarily obliged to hear new evidence. *R.* v. *Bray*, 2 *Bott.* 743. *Burr. S. C.* 684.

However, the court will send back a special case, in order that it may be amended as to a particular fact by new evidence. *R.* v. *Hitcham*, *Burr. S. C.* 489.

Special orders of sessions are considered in the nature of special verdicts, which are not to state the evidence of the fact, but the fact itself. *R.* v. *Martley*, *Burr. S. C.* 120. 2 *Bott.* 741.

Of Costs.

8 & 9 W.3. c.30. Justices, on appeal to them concerning the settlement of any poor person, to award costs.

Stat. 8 & 9 *W.* 3. *c.* 30. § 3. For the more effectual preventing of vexatious removals and frivolous appeals, enacts, that the justices of the peace of any county or riding, in their general or quarter sessions of the peace, upon any appeal before them there to be had, for and concerning the settlement of any poor person, or upon any proof before them there to be made, of notice of any such appeal to have been given by the proper officer to the churchwardens or overseers of the poor of any parish or place (though they did not afterwards prosecute such appeal) shall, at the same quarter-sessions, award and order to the party for whom and in whose behalf such appeal shall be determined, or to whom such notice did appear to have been given, as aforesaid, such costs and charges in the law, as by the said justices in their discretion shall be thought most reasonable and just, to be paid by the churchwardens, overseers of the poor, or any other person, against whom such appeal shall be determined, or by the person that did give such notice as aforesaid; and if the person ordered to pay such costs shall happen to live in any county, riding, city, or town corporate, or elsewhere, out of the jurisdiction of the said court, it shall and may be lawful for any justice of the peace of the county, riding, city, liberty, or town corporate, wherein such person shall inhabit, and every such justice is hereby required, upon request to him for that purpose to be made, and a true copy of the order for the payment of such costs produced, and proved by some credible witness upon oath, by warrant under his hand and seal to cause the money mentioned in that order to be levied by distress and sale of the goods of the person that is ordered and ought to pay the same: and if no such distress can or may be had, to commit such person to the common gaol of that county or liberty, there to remain by the space of 20 days.

Person ordered to pay costs living out of the jurisdiction; justice of the county, &c. where such person inhabits, may cause the money to be levied; if no distress, offender to be committed to gaol.

The words of the statute seem imperative upon the magistrates, to allow some costs where an appeal is heard, or notice of appeal has been given against an order of removal. 2 *Nol. P. L.* 473. 3*d ed.*

The allowance of *costs* upon an appeal from an order of removal is discretionary in the sessions.

R. v. *Justs. of Nottingham.* 5 *G.* 1. 2 *Bott.* 756. A *mandamus* was directed to the justices to give costs to the party in whose favour the appeal had been determined. But upon the return, the Court held it reasonable for them to have the power of judging whether costs should be allowed or not, and quashed the writ of *mandamus.*

The sessions cannot order costs on the mere adjournment of an appeal, without hearing it. *R.* v. *Stanfield*, *Burr. S. C.* 205. 2 *Bott*, 756.

As the justices have a discretionary power over the amount, it is customary to give 40*s.* unless the case has been accompanied with circumstances of vexation or fraud. 2 *Nol. P. L.* 474. *3d Ed.*

9 G. 1. c. 7. Justices, how to relieve the appellant on undue removals.

And by stat. 9 *G.* 1. *c.* 7. § 9. it is enacted that after 24th *June* 1723, if the justices of the peace shall, at their quarter-sessions, upon an appeal before them there had concerning the settlement of any poor persons, determine in favour of the appellant, that such poor person or persons was or were unduly removed, that then the said justices shall, at the same quarter-sessions, order and award to such appellant so much money as shall appear to the said justices to have been reasonably paid by the parish, or other place, on whose behalf such appeal was made for or towards the relief of such poor person or persons, between the time of such undue removal and the determination of such appeal; the said money so awarded to be recovered in the same manner as costs and charges upon an appeal are prescribed to be recovered by the said statute made in the 9th year of his late majesty king *William* the third, intituled *An act for supplying some defects in the laws for the relief of the poor of this kingdom.*

8 & 9 W. 3. c. 30.

Sessions must allow costs of maintenance.

Stat. 9 *G.* 1. *c.* 7. Is imperative upon the quarter sessions to allow the expences and charges of maintenance to the appellant where the appeal is decided for him. *St. Mary's Nottingham* v. *Kirklington, E.* 3 *G.* 3. 2 *Sess. Cas.* 67. 2 *Bott.* 756. 2 *Nol. P. L.* 476. *3d edit.*

As to the power to allow costs in criminal cases, see Vol. I. tit. **Costs.**

Of other Matters.

How far the sessions hath power over its own members.

It seemeth certain that the sessions hath no authority to amerce any justice for his non-attendance at the sessions, as the judges of assize may for the absence of any such justice at the gaol delivery; for it is a general rule that *inter pares non est potestas,* it being reasonable rather to refer the punishment of persons in a judicial office, in relation to their behaviour in such office, to other judges of a superior station, than to those of the same rank with themselves. And therefore it seems to have been holden, that if a justice at the sessions, who is not of the *quorum,* shall use such expressions towards another who is of the *quorum,* for which, if he were a private person, he might be committed or bound to his good behaviour, yet the sessions hath no authority to commit him, or to bind him to his good behaviour; and yet it seems to be agreed that if a justice give just cause to any person to demand the surety of the peace against him, he may be compelled by any other justice to find such security; for the public peace requires an immediate remedy in all such cases. 2 *Haw. c.* 8. § 46.

Whether justices be punishable for what is done in sessions.

Generally, it is said, that the justices are not punishable for what they do in sessions. *Staunf.* 173. Unless there be some manifest act of oppression, or wilful abuse of power. 2 *Barnard.* 249, 250. See *R.* v. *Seton,* 7 *T. R.* 374. In which case Ld. *Kenyon* C. J. said, " I believe there are instances in which a criminal information has been granted against magistrates acting in sessions."

No information against justices

R. v. *the Just. of Seaford,* 1 *Bla. Rep.* 432. It was moved for an information against four persons who were churchwardens and

overseers of the poor of *Seaford*, and also the only justices of the peace of the said borough, for refusing to put a substantial householder upon the poor rate (which is a necessary requisite towards giving a vote for members of parliament,) and upon appeal, refusing to amend the rate, or give relief in sessions. But as they were acting in a court of record, with powers entrusted to them by the constitution, the court said it must be a very strong case indeed, with *flagrant* proofs of their having acted from corrupt motives, that will warrant a rule for an information; and therefore refused to grant a rule to shew cause. acting in sessions, unless in very flagrant cases.

§ V. Of Adjournment, Fees, and Estreats.

Where the sessions is adjourned, the style of the sessions ought not to run *at such a sessions held by adjournment;* but the original meeting of the sessions ought to be set forth, and that it was continued from thence to such further time by adjournment. 2 *Str.* 832. 865. See also *R.* v. *Walker*, 2 *Sess. Ca.* 21. Adjournment of the sessions.

But such adjournment ought not to be beyond the time of meeting of the next quarter sessions. As in the case of *R.* v. *Grince*, *T.* 4 *G.* 1. An indictment was found before the justices for the county of *Lincoln* against a constable for refusing to obey an order of the justices; and the defendant was tried, convicted, and had judgment given against him, at a general sessions held the 3d day of *May* (which was after the *Easter* sessions began) by the adjournment of the *Epiphany* sessions; but by the court of K. B. the judgment was reversed, because the justices cannot continue one general sessions to a day subsequent to the time appointed by stat. 2 *H.* 5. *c.* 4. for the holding another original sessions. 19 *Vin. Abr.* 358.

By stat. 12 *R.* 2. *c.* 10. The justices shall take for their wages 4*s.* the day for the time of their sessions, and their clerk 2*s.* of the fines and amerciaments arising and coming of the same sessions, by the hands of the sheriffs. And the lords of franchises shall be contributory to the said wages, after the rate of their part of fines and amerciaments. 12 R. 2. c. 10. Wages of the justices and estreats.

But by stat. 14 *R.* 2. *c.* 11. No duke, earl, baron, or baneret, shall take any wages. 14 R. 2. c. 11.

And the estreats of the justices shall be doubled, and the one part delivered by them to the sheriff, to levy the money thereof rising, and thereof to pay the justices their wages by the hand of the sheriff, by indenture betwixt them thereof to be made.

The fees in sessions for traversing, trying, or discharging indictments, discharging recognisances of the peace and good behaviour, and the like, do vary according to the custom of the country; and in that case the custom of the place is to be observed. *Dalt. c.* 41. See Vol. I. tit. Clerk of the Peace. Fees in sessions.

By *Holt* C. J. The court cannot commit for non-payment of fees; for if there be right there is remedy; and *indebitatus assumpsit* will lie, if the fee be certain; if uncertain, *quantum meruit.* 2 Ld. *Raym.* 703.

With regard to the allowances to constables and others by justices in sessions, *vide* stat. 18 *G.* 3. *c.* 19. stated Vol. I. tit. Constable.

Precept to summon the Sessions.

[Lamb. 381.]

County of ——— } J. P. *and* K. P. *esquires, justices of our sovereign lord the king, assigned to keep the peace in the county of ——— aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the said county, and one of us of the quorum; to the sheriff of the same county, greeting; on the behalf of our said sovereign lord the king, we command you that you omit not, by reason of any liberty within your county, but that you enter therein, and that you cause to come before us, or others justices assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county, committed on ——— the ——— day of ——— now next ensuing, at the hour of ten in the forenoon of the same day at ——— in the said county, twenty-four good and lawful men of the body of the county aforesaid, then and there to enquire, present, do, and perform, all and singular such things which, on the behalf of our said sovereign lord the king, shall be enjoined them: also, that you make known to all coroners, keepers of gaols and houses of correction, high constables, and bailiffs of liberties within the county aforesaid, that they be then there to do and fulfil those things which by reason of their offices shall be to be done: moreover, that you cause to be proclaimed through the said county, in proper places, the aforesaid sessions of the peace to be held at the day and place aforesaid; and do you be then there, to do and execute those things which belong to your office; and have you then there as well the names of the jurors, coroners, keepers of gaols and of houses of correction, high constables and bailiffs aforesaid, as also this precept. Given under our seals, at* A. *in the county aforesaid, the ——— day of ———, in the ——— year of the reign of ———.*

When the sheriff hath received this precept he must direct several warrants to the several bailiffs of hundreds and liberties, containing in them the substance of the said precept.

The Style of the Sessions.

County of ——— } *THE general quarter-sessions of the peace holden at ——— in and for the said county, on the ——— day of ——— in the ——— year of the reign of our sovereign lord* George *the fourth; of the united kingdom of* Great Britain *and* Ireland, *king, defender of the faith, before* J. P. *and* K. P. *esquires and others, justices of our said sovereign lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, and of the quorum, and so forth.*

Condition of a Recognisance to appear and give Evidence at the Sessions, in case where the King is a Party.

THE condition of this recognisance is such, that if the above-bound A. W. *shall personally appear at the next general quarter-sessions of the peace to be holden at* ——— *in and for the county of* ———, *and then and there give such evidence as he knoweth against* ——— *for having feloniously taken and carried away* ———, *the property of* ———, *and do not depart thence without leave of the said court, then this recognisance to be void.*

Subpœna to give Evidence in case where the King is not Party.

GEORGE *the fourth* ——— *To* A. W., B. W., *and* C. W., *of* ——— *yeomen, greeting. We command you, and every of you, that all business being laid aside, and all excuses ceasing, you do in your proper persons appear before our justices assigned to keep our peace in the county of* ———, *and also to hear and determine divers felonies, trespasses, and other misdemeanors in our said county committed, at the sessions of the peace to be holden at* ——— *in and for the said county, on* ——— *the* ——— *day of* ——— *now next ensuing, at the hour of ten in the forenoon of the same day, to testify all and singular those things which you, or any of you, shall know, in a certain appeal now depending between the churchwardens and overseers of the poor of the parish of* ——— *appellants, and the churchwardens and overseers of the poor of the parish of* ——— *respondents, touching and concerning the removal of* A. P. *from the said parish of* ——— *to the said parish of* ——— [or in case where the king is a party ——— *to testify the truth and give evidence on our behalf against* A. O. *for assaulting* C. D.] *And this you and every of you are in no wise to omit, under the penalty of* 10*l. for you and every of you. Witness* J. P. *and* K. P. *esquires, two of his majesty's justices of the peace for the said county, the* ——— *day of* ———.

Note; there may be four witnesses put in one *subpœna.*

A Subpœna Ticket for a Witness.

MR. A. W. *By virtue of a writ of* subpœna *to you and others directed and herewith shewn unto you, you are required personally to be and appear at the next general quarter-sessions of the peace to be holden at* ———, *in and for the county of* ———, *to testify the truth according to your knowledge in a certain appeal now depending between the churchwardens and overseers of the poor of the parish of* ——— *appellants, and the churchwardens and overseers of the poor of the parish of* ——— *respondents, concerning the removal of* A. P. *from the said parish of* ——— *to the said parish of* ———, *on the part of the said appellants: and herein you are*

not to fail on pain of 10*l. Dated* ——— *day of* ——— *in the* ——— *year* ———.

Other matters relating to the very extensive office of a magistrate, may be found under their proper heads, in almost every title of this work.

Sessions, Petty & Special.

BY various statutes justices of the peace are empowered to hold petty and special sessions for especial purposes, *e.g.* by stat. 43 *Eliz. c.* 2. and 54 *G.* 3. *c.* 91. to appoint overseers of the poor; stat. 13 *G.* 3. *c.* 78. and 55 *G.* 3. *c.* 68. to appoint surveyors of the highways; by stat. 37 *G.* 3. *c.* 143. § 4. for appointing examiners of weights and balances, &c. &c.

A special sessions means a sitting convened by reasonable notice to the other magistrates of the division. *Per Bayley* J. *R.* v. *the Justices of Worcestershire*, 2 *B.* & *A.* 233.

Any occasional sitting of two magistrates is not a special sessions within the meaning of the statute relating to the diverting and turning of highways. *S. C.*

See also *R.* v. *the Justices of Devon*, 1 *B.* & *A.* 588.

Form of High Constable's Precept for a Petty or Special Sessions, see *tit.* Highways in general, No. XLV.

Sewers.

23 H. 8. c. 5. BY stat. 23 *H.* 8. *c.* 5. Commissions of sewers shall be issued in all parts of the realm, where need shall require.

13 Eliz. c. 9. And by stat. 13 *Eliz. c.* 9. For one year after the expiration of a commission of sewers the justices of the peace or six of them (2 Q.), may execute the powers of the said commission, unless a new commission shall be issued in the mean time.

But as the power and authority of these commissioners of sewers is not general enough to fall in with the design of this book, I shall choose to refer those whom it may particularly concern to the statutes at large which treat of this title; namely,

23 *H.* 8. *c.* 5.	3 & 4 *Ed.* 6. *c.* 8.
25 *H.* 8. *c.* 10.	7 *Ann. c.* 10.

Beside which general acts, there are others which concern the cities of *London* and *Westminster* only, and other places within the bills of mortality; to wit,

3 *J. c.* 14.	2 *W. sess.* 2. *c.* 8.
19 *C.* 2. *c.* 3. § 20.	8 & 9 *W. c.* 37.
22 & 23 *C.* 2. *c.* 17.	47 *G.* 3. *c.* 7.

The commissioners of sewers have jurisdiction over a sewer communicating with a navigable stream, or with the sea above the point where the tide ebbs and flows, if it be useful for navigation, and if the place over which the jurisdiction is, is likely to be benefited by it. *Dore* v. *Gray*, 2 *T. R.* 358.

Sewer communicating with navigable rive' or sea.

Sewer rates may be made to reimburse the charges of making such sewers. 2 *Str.* 1127.

It hath been determined that if a sea-bank, or wall, which the owners of particular lands are bound to repair, be destroyed by tempest, without any default in such owners, the commissioners of sewers may order a new one (in a different form if necessary) to be erected at the expence of the whole level. 8 *T. R.* 312.

Sea-wall thrown down by tempest.

See the case of *Rex* v. *the Commissioners of Sewers, County of Somerset*, 9 *East*, 109.

Commission of sewers extends only to navigable streams, unless within two miles of *London*. *Yeaw* v. *Holland*, *T.* 10. *G.* 3. 2 *Black. Rep.* 717.

Navigable streams.

Et vide *Netherton* v. *Ward*, 3 *B. & A.* 21. *Stafford* v. *Hamston*, 2 *Brod. & Bing.* 691. *The Duke of Newcastle* v. *Clark*, 2 *Moore*, *C. P.* 666. *Rex* v. *The Commissioners of Sewers for Essex*, 1 *B. & C.* 477.

Sheep.

[25 H. 8. c. 13. — 22 & 23 C. 2. c. 7. — 9 G. 1. c. 22. — 14 G. 2. c. 6. — 15 G. 2. c. 34. — 38 G. 3. c. 65. — 4 G. 4. c. 54.]

STAT. 25 *H.* 8. *c.* 13., for the preventing many farms being accumulated into few hands, and for the encouragement of tillage, enacts that no person shall have above 2000 sheep at one time, at six score to the hundred, except it be upon his own inheritance only, and except what are necessary for his household, on pain of forfeiting 3*s.* 4*d.* for every sheep above that number, half to the king, and half to him that will sue.

25 H. 8. c. 13. None shall have above 2000 sheep.

And if any person shall happen to have more, by reason of being executor or administrator, he shall sell off within a year, till he have 2000.

But sheep bequeathed to a child within age, shall not be reckoned in the number.

Lambs are not to be reckoned sheep till the second *Midsummer* after they are lambed.

When lambs are deemed sheep.

And the justices of the peace may enquire of this offence by a jury, or by information.

By stat. 22 & 23 *C.* 2. *c.* 7. § 2. If any person shall in the night-time maliciously, unlawfully, and willingly kill any sheep, it shall be adjudged felony: but to avoid judgment of death, he may make his election to be transported for seven years.

22 & 23 C. 2. c. 7. Killing sheep in the night.

§ 5. If any person shall in the night-time maliciously, unlawfully, and willingly maim, wound, or otherwise hurt any sheep

Hurting sheep in the night.

whereby the same is not killed or utterly destroyed; he shall forfeit to the party grieved treble damages, by action of trespass or on the case.

§ 6. Three justices may enquire of such offence by the oaths of 12 men.

(Proceedings under this act to be within six months.)

9 G.1. c.22. And by the black act, 9 *G.* 1. *c.* 22. unlawfully and maliciously killing, maiming, or wounding *any cattle*, was made felony without clergy; but by stat. 4 *G.* 4. *c.* 54. § 2. the punishment for this felony is changed to transportation for life, or for not less than seven years, as the court shall adjudge; or to imprisonment, with or without hard labour, for not exceeding 7 years. See Vol. I. *tit.* Cattle.

4 G.4. c.54.

14 G.2. c.6. Sheep stealing or killing.

By stat. 14 *G.* 2. *c.* 6. reciting "that ill-disposed persons had made it a practice secretly in the night to kill sheep and strip off their skins and then steal the carcasses, leaving the skins behind to prevent discoveries; and also in like manner to kill sheep, and then cut them open and take out and steal their inward fat, leaving their carcasses behind to prevent being discovered," &c. enacts "that if any person or persons shall at any time feloniously drive away, or in any other manner feloniously steal one or more sheep or other cattle of any other person or persons whatsoever; or shall wilfully kill one or more sheep or other cattle of any other person or persons, with a felonious intent to steal the whole carcass or carcasses, or any part or parts of the carcase or carcasses of any one or more sheep or other cattle which shall be so killed; or shall assist or aid any person or persons to commit such offence or offences; then the person or persons guilty of any such offence, being thereof convicted, shall be adjudged guilty of felony without benefit of clergy."

15 G.2. c.34. Other cattle.

This statute, with respect to the words "*other cattle*," is explained by stat. 15 *G.* 2. *c.* 34. which enacts and declares "that the former statute was intended and shall be deemed to extend to any bull, cow, ox, steer, bullock, heifer, calf, and lamb, as well as sheep, and to no other cattle whatsoever."

Indictment for stealing lambs sustained by proof that the carcasses were found in the owner's ground and only the skins taken away.

Rawlins's case, *Sarum Sum. Ass.* 1800, cor. *Lord Eldon*, 2 *East's P.C.* 617. *Rawlins* was indicted for stealing six lambs: and the fact proved was, that the carcasses of the lambs, without their skins, were found on the premises where they had been kept, and that the prisoner had sold the skins, (which were identified,) the morning after the offence was committed. There was no count in the indictment for killing with intent to steal the carcass, or any part thereof; but as the lambs must have been removed from the fold, the jury were directed to find the prisoner guilty, which they accordingly did. But a doubt occurring whether as the stat. 14 *G.* 2. *c.* 6. specifies feloniously driving away, and feloniously killing with intent to steal the whole or any part of the carcass, as well as feloniously stealing in general, although there must in such cases be some removal of the thing, it did not intend to make these different offences; the case was submitted to the judges in *Mich.* term, 1800, who held the conviction right; for any removal of the thing feloniously taken, constitutes larceny. *Crompton's Justice* states the law in the same manner. *Vide Hale's Sum.* 64. *S. P.* *Cromp.* 36. *pl.* 17.

Cowell and *Green* were convicted upon an indictment, charging that *Cowell* feloniously stole one live ewe sheep, the goods, &c. of *J. L.;* and that *Green* received "twenty pounds of *mutton*, part of the goods, &c. so as aforesaid feloniously stolen, &c. knowing the same to have been stolen." — On a question referred to the judges, whether the indictment were sufficient against the accessary, they all held the conviction proper. *R.* v. *Cowell and Green, Suffolk Sum. Ass.* 1796, cor. *Lord C. J. Eyre.* 2 *East's P. C.* 617. Indictment against principal and receiver.

With a felonious intent to steal the whole carcass, &c.] See *Thomas Clay's* case, Vol. I. *tit.* Cattle, § III.

N. B. Killing with intent to steal the skin is not within stat. 14 *G.* 2. It must be to steal part of the carcass.

By stat. 38 *G.* 3. *c.* 65. § 1. If any person shall turn out, keep or depasture upon any forests, chase, wood, moor, marsh, heath, common, waste land, open field, or other undivided or uninclosed land, any sheep or lambs infected with the disorder called *scab* or *mange;* or shall wilfully and knowingly turn out, keep or depasture upon any such place any sheep or lamb which at any time within six calendar months immediately previous thereto shall have been infected as aforesaid; he shall, on conviction, on confession or oath of one witness, before one justice, forfeit not exceeding 10*l.* nor less than 20*s.* for every such offence, and as often as the same are so turned out; together with reasonable costs to be ascertained by such justice. 38 G. 3. c. 65. Turning out scabbed sheep on commons, &c.

§ 2. The owner of every sheep and lamb three months old, which shall be turned out upon any such place as aforesaid, shall cause the same to be marked with the initial letters of his christian and surname, or with such marks with which such sheep or lambs have for three preceding years been usually marked, such letters or marks not being less in length than three inches; and on neglect, the owner shall, for every such sheep and lamb not so marked, forfeit not exceeding 2*s.* as often as it shall be so turned out as aforesaid. Sheep and lambs 3 months old to be marked.

§ 3. And any person having sheep or lambs actually depasturing or entitled to be depastured on any such place as aforesaid, who shall perceive or have reasonable ground for believing that there is any sheep or lamb depasturing, or being in or upon such place contrary to the provisions of this act, may apply to a justice, who on complaint upon oath may issue his warrant, directed to the keeper of such forest or chase, or his deputy, or to the petty constable, bailiff, headborough, or tythingman of any parish or place, within or near which any such forest or place shall be situate, or other person willing to be inserted in such warrant, and shall command such person to take or drive such sheep and lambs to the next pound or other convenient place, there to be examined by the person who made such complaint, his servant or agent, and by the person to whom such warrant is directed, or any of them, six hours' notice being first given by the person making such complaint, or by his servant, to the owner, or to his hind, bailiff, or servant, or left at their last or usual place of abode, if any or either of them be known, and do reside in such parish or place, describing the pound or place the same have been taken to, in order that they may be present at such examination; and Persons having a right on commons, &c. may complain to a justice, and have suspected sheep examined.

38 G.3. c.65.

If not found defective, to be returned to the place from which taken.

if after such examination it shall be proved to the satisfaction of such justice that such sheep or lambs have not been kept or depastured on such lands contrary to the provisions of this act, then they shall be taken and driven back to the place from whence they were taken; and such justice shall award such costs, charges, and damages to the owner as to him shall seem reasonable, to be paid by the person making such complaint, and recovered in like manner as other penalties are by this act directed to be recovered.

If found defective, to be marked, and delivered on demand to the owner.

§ 4. But if upon such examination it shall appear to such justice, that such sheep or lambs when turned out, kept or depastured, or within six months previous thereto, were infected as aforesaid, then such justice shall direct the same to be impounded, detained and kept, and to be marked on both sides with the letter S. (not less than 5 inches in length), and made with pitch, tar or some other adhesive material, such as sheep had been usually marked with in the neighbourhood; and shall also cause the left ear of such sheep or lamb to be cut or slit in an horizontal line (not exceeding one inch long), and the same when so marked, shall be delivered upon demand to the owner; and the expences attending the taking, driving, keeping, impounding, and marking of the same, having been ascertained by such justice, shall be paid by such owner, together with the penalties imposed by this act; to be recovered as other penalties hereby imposed. And such mark when made shall be deemed evidence of the fact, that they have been turned out, kept or depastured contrary to this act, without any other evidence.

Persons destroying marks, and owners not renewing them.

§ 5. If any person within six calendar months after such sheep or lambs shall have been so marked, shall cut out, alter or destroy the said mark in the ear: or if the owner shall not immediately renew the mark made on the side as often as the same shall be defaced, altered, obliterated or destroyed by any means whatsoever, he shall, for every sheep and lamb, forfeit, on conviction, not exceeding 20*s.* nor less than 2*s.*, and such justice shall order such mark to be renewed, and such sheep and lamb to be impounded until such mark is renewed.

Sheep not demanded in five days after marked may be sold.

§ 6. And if such sheep or lamb so detained shall not be demanded and taken away by the owner within five days after having been so marked, any justice may by warrant direct the same to be sold; and the money arising thereby, after deducting the costs, shall be paid to the overseer of the poor of the place where such sheep or lamb shall be so detained: and in case the owner shall not claim such money within 12 calendar months after such payment, the same shall be applied in aid of the poor rate.

Penalties how to be recovered and applied.

§ 7. All penalties and forfeitures by this act imposed shall be levied by distress and sale of the goods of the offender, by warrant of one justice, together with the costs; which warrant such justice shall grant upon conviction, by confession or oath of one witness; half to the informer, and half to the overseer of the place where the offence shall be committed, in aid of the poor rate.

Form of conviction and adjudication.

§ 8. The conviction and adjudication shall be in the words, or to the effect following:

County of } *BE it remembered, that on this* ——— *day of* 38 G.3. c.65.
——— } ———, *in the* ——— *year of the reign of* ———, A. B. *is convicted before* ——— *of his majesty's justices of the peace for the* ——— *of* ———, *by virtue of an act of parliament, made in the thirty-eighth year of the reign of king* George *the third, intituled,* [here set forth the title of the act (*a*), and specify the offence, and the time and place when and where the same was committed]; *and I* [or, *we*] *the said* ——— *do adjudge him* [*her,* or *them*] *to forfeit and pay for the same the sum of* ———. *Given under my hand and seal* [or, *our hands and seals*] *the day and year aforesaid.*

The Form of Adjudication.

County of } *UPON the report upon the oath* [or, *oaths*] *of*
——— } ———, *this* ——— *day of* ———, *in the year of our Lord* ———, *made unto* ——— *of his majesty's justices of the peace for the* ——— *of* ———, *respecting certain sheep* [and, *lambs*] *detained* [or, *impounded*] *in a* ——— *in the parish of* ——— *in the said county, by virtue of a warrant under our hands and seals* [or, *my hand and seal*] ——— *do hereby adjudge that such sheep* [and, *lambs*] *belonging to* A. B. [or, *the owner or owners thereof being unknown*] *appearing to me* [or, *us*] *to be infected with the scab or mange* [or, *having within the space of* ——— *months, immediately previous to the date hereof, been infected with the scab or mange*] *be marked forthwith according to the directions of an act, made in the thirty-eighth year of the reign of king* George *the third, intituled,* [here set forth the title of the act.] *Given under our hands and seals,* [or, *my hand and seal*] *the day and year aforesaid.*

§ 9. Provided always, that if any person shall think himself aggrieved, he may appeal to the sessions which shall be holden next after the expiration of four calendar months from the time such matter of appeal shall have arisen, and such sessions may hear and determine such appeal in a summary way, and make such determination and award such costs as they shall judge proper, which shall be final and conclusive. Appeal.

§ 10. No distress shall be deemed unlawful for want of form, nor party deemed a trespasser *ab initio* on account of any irregularity afterwards done by the party distraining. And no proceedings shall be quashed for want of form, or be removeable by *certiorari* or other process whatsoever. Distress not deemed unlawful for want of form; nor proceeding to be removed by *certiorari.*

[For all matters relating to the *exportation* of live sheep, rams, and lambs; or carrying the same *coastwise*, or to the isles of *Jersey, Guernsey, Alderney, Sark,* and *Man*; see title **Woollen Manufacture.**]

As to licensing slaughter houses for sheep, see stat. 26 *G.* 3. *c.* 71. Vol. II. *tit.* **Horses,** § IV. Slaughter houses.

(*a*) "An act for preventing the depasturing of forests, commons, and open fields, with sheep or lambs infected with the scab or mange, in that part of *G. B.* called *England.*"

Sheriff.

[13 Ed. 1. st. 1. c. 39. — 9 Ed. 2. st. 2. — 4 Ed. 3. c. 9. — 5 Ed. 3. c. 4. — 14 Ed. 3. st. 1. c. 7. — 14 Ed. 3. c. 15. — 28 Ed. 3. c. 7. — 1 R. 2. c. 11. — 4 H. 4. c. 5. — 1 H. 5. c. 4. — 23 H. 6. c. 8. c. 10. — 17 Ed. 4. c. 6. — 19 H. 7. c. 10. — 27 El. c. 12. — 1 Mar. sess. 2. c. 8. — 13 & 14 C. 2. c. 21. — 3 G. 1. c. 15. — 9 G. 1. c. 9. — 20 G. 2. c. 37. — 42 G. 3. c. 20.]

Sheriff, what.

SHERIFF (*shireve*) in *Saxon* is *scirgerefa*, from *sciran*, to *share* or *divide*, for that the whole realm is parted and divided into *shires*; and *gerefa*, the *comes*, earl or governor, in the *Belgick*, called *graef* or *grave*. The word *comes* or *count* came first into *Europe* out of the eastern countries, and the word *county*, in *Latin comitatus*, seemeth to be nothing else but the division or allotment over which the *comes* or *count* had jurisdiction. And when the counts or earls left the custody of the counties, then was the custody thereof committed to the *viscounts*, or *vicecomites* (which is the Latin name for sheriffs); so called, because they supply the place of the *comes* or earl. The *earl* was otherwise called by the Saxons, *eorl*, *ealdor*, *ealdorman*, (elder or alderman), because they were usually men of age and experience; by a like derivation as that of *senators* among the *Romans*.

Who shall be sheriff.

By four several statutes it is enacted that none shall be sheriff, except he have sufficient land within the shire to answer the king and his people. viz. 9 *Ed.* 2. *st.* 2. 4 *Ed.* 3. *c.* 9. 5 *Ed.* 3. *c.* 4. 13 & 14 *C.* 2. *c.* 21.

Militia officers exempted;

By the militia act, 42 *G.* 3. *c.* 90. § 172. No person, being an officer of the militia, shall be compelled to serve the office of sheriff.

And attornies.

In the case of the mayor of *Norwich* v. *Berry*, 4 *Burr.* 2109. It was adjudged that an *attorney* is exempted from the office of sheriff of a corporation, by reason of his attendance on the courts at *Westminster*; and though Ld. *Mansfield* C. J. distinguished this office in a corporation from that of the sheriff of a county, he seemed to think the privilege extended equally to the latter.

The payment of the fine fixed by stat. 9 *G.* 1. *c.* 9. § 3. to be discharged from serving the office of *sheriff* of *Norwich*, does not exempt the person paying it for more than one year, unless the corporation agree that he shall be discharged for a longer time. *R.* v. *Woodrow*, 2 *T. R.* 731.

How chosen.

At the common law the sheriff was chosen by the county; but by the stat. 14 *Ed.* 3. *st.* 1. *c.* 7. he shall be appointed yearly on the morrow of *All Souls*, (since altered to the morrow of *St. Martin*,) at the exchequer, by the chancellor, treasurer, and chief baron, taking to them the chief justices.

Except in *London*, and where the office is a man's freehold or inheritance. Stat. 23 *H.* 6. *c.* 8.

By stat. 3 *G.* 1. *c.* 15. § 18. The sheriff (except in *Wales* and *Chester*) at the entering upon his office shall take the follow-

ing oath (to be administered in pursuance of a writ of *dedimus potestatem*):

Sheriff's oath of office.

I A. B. *do swear, that I will well and truly serve the king's majesty in the office of sheriff of the county of ———, and promote his majesty's profit in all things that belong to my office, as far as I legally can or may; I will truly preserve the king's rights, and all that belongeth to the crown; I will not assent to decrease, lessen or conceal the king's rights or the rights of his franchises; and whensoever I shall have knowledge that the rights of the crown are concealed or withdrawn, be it in lands, rents, franchises, suits or services, or in any other matter or thing, I will do my utmost to make them be restored to the crown again; and if I may not do it myself, I will certify and inform the king thereof, or some of his judges; I will not respite or delay to levy the king's debts for any gift, promise, reward or favour where I may raise the same without great grievance to the debtors; I will do right, as well to poor as to rich, in all things belonging to my office; I will do no wrong to any man for any gift, reward or promise, nor for favour or hatred; I will disturb no man's right, and will truly and faithfully acquit at the exchequer all those of whom I shall receive any debts or duties belonging to the crown; I will take nothing whereby the king may lose, or whereby his right may be disturbed, injured or delayed; I will truly return and truly serve all the king's writs according to the best of my skill and knowledge; I will take no bailiffs into my service, but such as I will answer for, and will cause each of them to take such oaths as I do, in what belongeth to their business and occupation; I will truly set and return reasonable and due issues of them that be within my bailiwick, according to their estate and circumstances, and make due panels of persons able and sufficient, and not suspected or procured, as is appointed by the statutes of this realm; I have not sold or let to farm, nor contracted for, nor have I granted or promised for reward or benefit, nor will I sell or let to farm, nor contract for, or grant for reward or benefit, by myself or any other person for me, or for my use, directly or indirectly, my sheriffwick or any bailiwick thereof, or any office belonging thereunto, or the profits of the same, to any person or persons whatsoever; I will truly and diligently execute the good laws and statutes of this realm; and in all things well and truly behave myself in my office, for the honour of the king and the good of his subjects, and discharge the same according to the best of my skill and power.* So help me God.

Sheriff selling inferior offices.

By stat. 4 *H.* 4. *c.* 5. The sheriff in person shall continue within his bailiwick, and shall not let it to farm.

And by stat. 3 *G.* 1. *c.* 15. § 10. None shall buy, sell, let or take to farm the office of under-sheriff, gaoler, bailiff, or other office pertaining to the office of high sheriff, on pain of 500*l.*, half to the king, and half to him that shall sue (in two years.)

Sheriff's officers not to be attornies or jurors.

By stat. 1 *H.* 5. *c.* 4. No under-sheriff, sheriff's-clerk, receiver, nor sheriff's bailiff, shall be attorney in the king's courts, during the time that he is in office with any sheriff.

And by stat. 23 *H.* 6. *c.* 10. the sheriff shall return none of his officers upon inquest, on pain of 40*l.*, half to the king, and half to him that shall sue in the sessions or elsewhere.

Appointment of the under-sheriff.

By stat. 3 *G*. 1. *c*. 15. § 11. The under-sheriff shall be appointed by the high-sheriff, because he shall answer for him, and by § 19. he shall take the like oath as the high sheriff, *mutatis mutandis*.

The sheriff is answerable for the official acts of his under-sheriff. 1 *Doug*. 43. *n*.

An under-sheriff cannot refuse to execute process, till he has his fees. *Hescott's case*, 1 *Salk*. 330.

An inquisition, taken before two under-sheriffs extraordinary, set aside: for the high-sheriff can appoint only *one* under-sheriff extraordinary. 2 *Wils*. 378.

Appointment of bailiffs.

The bailiffs also shall be appointed by him for the like reason; and every bailiff, when he gives security, upon entering into his office, shall make it part of the condition of such security that he will deliver a copy of the clauses in stat. 32 *G*. 2. *c*. 28. concerning the carrying of prisoners for debt to alehouses, (which is inserted more at large in Vol. II. *tit*. Gaols, &c. § XVIII.)

And by stat. 27 *Eliz*. *c*. 12. § 2. Such bailiff, or other person returning juries, or intermeddling with processes, shall take the following oath of office, before a judge of assize, or the *custos rotulorum*, or two justices of the peace (1 *Q*.):

Bailiff's oath.

I A. B. *shall not use or exercise the office of bailiff corruptly during the time that I shall remain therein, neither shall nor will accept, receive or take, by any colour, means or device whatsoever, or consent to the taking of any manner of fee or reward of any person or persons for the impanelling or returning of any inquest, jury, or tales in any court of record, for the king, or betwixt party and party, above 2s. or the value thereof, or such fees as are allowed and appointed for the same by the laws and statutes of this realm, but will, according to my power, truly and indifferently, with convenient speed, impanel all jurors, and return all such writ or writs touching the same as shall appertain to be done by my duty or office, during the time that I shall remain in the said office.* So help me God.

§ 4. 6. Persons acting before they have taken the said oath shall forfeit 40*l*.; half to the king, and half to him that shall sue in the sessions, or other court of record.

§ 5. If they commit any act contrary to their said oath, they shall forfeit (in like manner) to the party grieved his treble damages.

1 H. 5. c. 4.

By stat. 1 *H*. 5. *c*. 4. The sheriff's bailiffs shall not be in the same office in three years after. Except in *London*, *Middlesex*, *Durham*, *Westmorland*, and towns being counties of themselves. 3 *G*. 1. *c*. 15. § 21.

The sheriff and bailiff are not both answerable in an action for a penalty for the same act. 2 *T*. *R*. 712.

But, after verdicts in both actions, the court will stay proceedings in both on paying one penalty, and the costs in one action. 2 *T*. *R*. 712.

It seems that an action may be maintained against the sheriff for the penalty, given by stat. 29 *Eliz*. *c*. 4. for the acts of his bailiff. 2 *T*. *R*. 155. *et seq*.

But all actions *for breach of duty* of the office of sheriff, must be brought against the *high sheriff*, though in consequence of the

default of the *under sheriff* or *bailiff*. *Cameron* v. *Reynolds*, 1 *Cowp*. 403.

The sheriff hath a jurisdiction both in criminal and civil cases; and for this purpose he hath two courts, his *tourn* for criminal causes, which is therefore the king's court; the other in his *county court* for civil causes, and this is the court of the sheriff himself. 3 *Salk*. 322.

The sheriff's two courts, the tourn and county court.

The new sheriff being appointed and sworn, he ought at or before the next county court to deliver a writ of discharge to the old sheriff, who is to set over all the prisoners in the gaol severally by their names (together with all the writs) precisely, by view and indenture between the two sheriffs; wherein must be comprehended all the actions which the old sheriff hath against every prisoner, though the executions are of record. And till the delivery of the prisoners to the new sheriff, they remain in the custody of the old sheriff, notwithstanding the letters patent of appointment, the writ of discharge, and the writ of delivery. Neither is the new sheriff obliged to receive the prisoners, but at the gaol only. But the office of the old sheriff ceases, when the writ of discharge cometh to him. *Wood's Inst. b*. 1. *c*. 7.

Sheriff's receiving the accounts of his predecessor.

By stat. 20 *G*. 2. *c*. 37. The old sheriff shall turn over to his successor, by indenture and schedule, all such writs and process as shall remain unexecuted; and the new sheriff shall execute and return the same.

Old sheriff to turn over unexecuted process to successor.

When a sheriff quits his office, the custody of the county gaol can only belong to his successor. The county gaol is the prison for malefactors, and the sheriff ought to keep them there; but prisoners for debt, &c. where escape lies against the sheriff for their escape, may be kept in what place the sheriff pleases. 1 Ld. *Raym*. 136.

The sheriff having a justice of the peace's warrant directed to him shall execute the same; but he need not go in person to execute it, but may authorise another to do it. 2 *Haw*. *c*. 13. § 29.

Sheriff how far amenable to the justices of the peace.

And it is no excuse to the sheriff to return that he could not execute a precept because of resistance; for he may take with him the power of the county. 13 *Ed*. 1. *stat*. 1. *c*. 39.

Also the sheriff, on summons, is bound to attend the sessions of the peace, there to return his precepts, to take the charge of the prisoners, to receive fines for the king, and the like. 2 *Haw*. *c*. 8. § 45.

And it seems clear from the general reason of the law, which gives all courts of record a kind of discretionary power over all abuses by their own officers, that the sheriff is punishable by the justices in sessions for defaults in executing their writs and precepts. 2 *Haw*. *c*. 22. § 2.

In the case of *Bengough and another* v. *Rossiter*, 4 *T*. *R*. 505. it was determined that a sheriff has no authority to take a *bond* for the appearance of persons arrested by him under process issuing upon an indictment at the quarter sessions for a misdemeanor; he can only take a *recognisance* for their appearance.

Every sheriff is a principal conservator of the peace, by the common law, and may *ex officio* award process of the peace and take surety for it; and it seems to be the better opinion, that the

Sheriff, a conservator of the peace, but not

to act as justice.

security so taken by him is by the common law looked on as a recognisance or matter of record, and not as a common obligation. 2 *Haw. c.* 8. § 4.

By 1 *Mar. sess.* 2. *c.* 8. No sheriff shall exercise the office of a justice of the peace in any county wherein he is sheriff; and in such case his acts as a justice shall be void.

Sheriff, to have the keeping of gaols.

By stats. 14 *Ed.* 3. *st.* 1. *c.* 10. and 19 *H.* 7. *c.* 10. The sheriff shall have the keeping of gaols.

And in all *civil* causes, as in cases of imprisonment for debt, the sheriff or gaoler (at the election of the party) shall be answerable for escapes suffered by the gaoler; but if the gaoler suffer a *felon* voluntarily to escape, this, inasmuch as it reacheth to life, is felony only in the gaoler, but the sheriff may be indicted, fined, and imprisoned. 1 *Hale*, 597.

Sheriff answerable for money levied by him.

Where the sheriff levies money on a *fieri facias*, the plaintiff may have an action of debt against him for the money, because it was received by him to the plaintiff's use, and the defendant is discharged of it; and it lies against his executors if he die. 3 *Salk.* 323.

Passing his account.

The manner of passing his accounts is directed at large by stat. 3 *G.* 1. *c.* 15. & 16., which being foreign to our purpose, are not here inserted.

How long he shall continue in office.

By stat. 14 *Ed.* 3. *st.* 1. *c.* 7., and stat. 28 *Ed.* 3. *c.* 7. No sheriff shall continue in his office above one year, except in *London*, *Middlesex*, and towns being counties of themselves, and where the office is a man's freehold or inheritance: See stats. 23 *H.* 6. *c.* 8.; 3 G. 1. *c.* 15. § 21.

And by stat. 1 *R.* 2. *c.* 11. None that hath been sheriff shall be so again within three years, if there be other sufficient.

But by stat. 17 *Ed.* 4. *c.* 6. The sheriff may hold his office after the year, during *Michaelmas* and *Hilary* terms, if not before lawfully discharged.

Sheriff dying before the expiration of his office.

By stat. 3 G. 1. *c.* 15. § 8. If the sheriff shall die before his office shall be expired, the under-sheriff shall execute the same in the deceased sheriff's name till a new sheriff be sworn, and be answerable for the execution thereof as the deceased sheriff would have been.

Ships.

[11 G. 1. c. 29.—12 G. 3. c. 24.—33 G. 3. c. 67.—43 G. 3. c. 113. —48 G. 3. c. 104., c. 130.—49 G. 3. c. 122.—52 G. 3. c. 39. —53 G. 3. c. 87.—55 G. 3. c. 87.—1 & 2 G. 4. c. 75., c. 76.— 4 G. 4. c. 41., c. 84., c. 88.]

11 G. 1. c. 29. Wilfully destroying. *See 43 G. 3. c. 113. p. 235.*

BY stat. 11 G. 1. *c.* 29. § 6. If any owner of, or captain, master, mariner, or other officer belonging to any ship, shall wilfully cast away, burn, or otherwise destroy the ship of which he is owner, or unto which he belongeth, or in any wise direct or procure the same to be done, with intent to prejudice any person

that shall underwrite any policy of insurance thereon, or any merchant that shall load goods thereon; he shall be guilty of felony without benefit of clergy.

And if any of the said offences are committed within the body of a county, they shall be tried there; if on the high seas, they shall be tried as in cases of piracy under the statute 28 *Hen.* 8. *c.* 15.

Upon this statute *W. Codling*, the master of the ship, was indicted at the admiralty sessions *October*, 1802, for wilfully destroying the ship on the high seas, and *W. Macfarlane* and *G. Easterby*, the owners of the ship, for procuring the master *on the high seas* to destroy the ship, with intent to defraud the underwriters. *Codling*, the master, was convicted and executed: but as the owners had only given orders when *on shore* to the master to effect this purpose, it was objected that they had committed no offence within the jurisdiction of the admiralty, and consequently were entitled to an acquittal. The jury found them guilty upon the facts; but the question of law was reserved for the consideration of the judges; who, after having heard the case twice argued, were all of opinion, that as no act had been done by the owners within the jurisdiction of the admiralty, they were not subject to that jurisdiction, and consequently that the trial was improperly had. *Case of Easterby and Macfarlane*, 1 *East's P. C. Add. XXVI.*

Soon after this decision, stat. 43 *G.* 3. *c.* 113. was passed, which, after reciting that the provisions of stat. 11 *G.* 1. *c.* 29. § 5, 6, 7. and a prior statute, 4 *G.* 1. *c.* 12. § 3. were ineffectual for the prevention and punishment of the offences therein mentioned, repeals them; and then enacts, § 2., that if any person shall, after the 16th *July*, 1803, wilfully cast away, burn, or otherwise destroy any vessel, or in any wise counsel, direct, or procure the same to be done, and the same be accordingly done, with intent thereby wilfully and maliciously to prejudice any owner thereof, or any owner of any goods laden on board the same, or any person, body politic or corporate, that hath underwritten or shall underwrite any policy of insurance upon any such vessel, or on the freight thereof, or upon any goods laden on board the same, the offender, being lawfully convicted thereof, shall be adjudged a principal felon, and shall suffer death without benefit of clergy.

43 G. 3. c. 113.

Persons wilfully casting away, or otherwise destroying vessels, to suffer death.

§ 3. And if any such vessel shall be wilfully cast away, burnt, or otherwise destroyed, within the body of any county, then the said several offences shall be respectively enquired of, tried, determined, and adjudged in the same courts and in such manner as felonies done within the body of any county, by the laws of this realm now are to be, or by virtue of this act hereafter may be, enquired of and tried. And if any vessel shall be wilfully cast away, burnt, or otherwise destroyed, on the high seas, then the said several offences may be enquired of, tried, and determined in the same manner and before such court as is appointed by stat. 28 *H.* 8. *c.* 15. for enquiring, trying, and adjudging felonies upon the high seas.

Where such offences, committed within the body of any county, or on the high seas, may be tried.

§ 5. Accessaries before the fact, (in case the principal felony was committed within the body of any county) may be tried

Accessaries.

43 G.3. c.113. either within the county where the principal felony was committed, or in the county where the offence of becoming accessary before the fact was committed; and in case the principal felony was committed upon the high seas, then in such court as is directed by stat. 28 *H.* 8. *c.* 15. for trying felonies committed upon the high seas. Provided that no person shall be tried more than once for the same offence of being accessary before the fact.

12 G.3. c.24. Burning or destroying H.M.'s shipping or stores. By stat. 12 *G.*3. *c.*24. If any person shall either within this realm, or any of the countries, islands, forts, or places thereunto belonging, wilfully and maliciously set on fire or burn or otherwise destroy any of H. M.'s ships or vessels of war, whether the same be on float, or building in any of H. M.'s dock yards, or building or repairing by contract in any private yard; or any of H. M.'s arsenals or magazines, dock yards, rope yards, victualling offices or any of the buildings erected therein, or belonging thereto; or any timber or materials there placed, for building, repairing, or fitting out ships or vessels; or any of H. M.'s military, naval, or victualling stores, or other ammunition of war; or any place where any such military, naval, or victualling stores, or other ammunition of war shall be placed or kept; he, and also his aiders and abettors, shall be guilty of felony without benefit of clergy.

Persons committing any of the said offences in any place out of the realm, may be indicted and tried for the same, either where the offence was committed, or in any county within this realm, as H. M. may deem most expedient, as if the same had been committed within such county.

33 G.3. c.67. Seamen, &c. riotously assembled to prevent loading of vessels, &c. Or to prevent carpenters and others from working. By stat. 33 *G.* 3. *c.* 67. (*a*) § 1, 2. If any seamen, keelmen, casters, ship carpenters, or other persons, riotously assembled together to the number of three or more, shall unlawfully and with force prevent, hinder, or obstruct the loading or unloading, sailing, or navigating of any ship, keel, or other vessel, or shall unlawfully and with force board the same with that intent, or if any such seaman or other person as aforesaid shall unlawfully and with force prevent, hinder, or obstruct any seaman, keelman, caster, or ship carpenter from working at, employing himself in or exercising his lawful trade or occupation, or wilfully and maliciously assault, beat, or wound, or use or commit any bodily violence or hurt to any such person, with intent to deter, prevent, hinder or obstruct him from working at, &c. his lawful trade; every such person shall, on conviction of any of the offences aforesaid, upon indictment at the assizes or quarter sessions, be committed to the common gaol without bail, (or to the house of correction, and to be kept to hard labour,) for any time not exceeding twelve nor less than six calendar months.

Offending a second time. § 3. And upon being convicted of a second offence, he is to be adjudged guilty of felony, and transported for any time not exceeding 14 nor less than 7 years.

Not to extend to H.M.'s service. § 4. But none of the penalties or punishments herein inflicted shall extend to matters done in the service or under the authority of H. M.

(*a*) This act is made perpetual by 41 *G.*3. (*U.K.*) *c.*19. § 1.

§ 5. If any such seaman, &c. or other person, shall wilfully and maliciously burn or set fire to any ship, keel, or other vessel, he shall, on conviction at the assizes, be adjudged guilty of felony without benefit of clergy. 33 G.3. c.67. Wilfully setting fire to ships;

§ 6. Or, shall wilfully and maliciously destroy or damage any ship, keel, or other vessel, (otherwise than by fire,) he shall, on conviction at the assizes or quarter sessions, be adjudged guilty of felony, and be transported for any term not exceeding 14 nor less than 7 years. or damaging them by other means.

§ 7. Offences committed on the high seas may be tried in any sessions of oyer and terminer, &c. within the jurisdiction of the admiralty. Offences on high seas.

§ 8. All prosecutions by virtue of this act shall be commenced within 12 calendar months after the offence is committed. Prosecutions to be commenced within a year.

By stat. 4 *G.* 4. *c.* 41. § 25., (by which all former acts relating to the registry of ships and vessels are repealed, and new provisions made,) it is enacted that, in case the master of any ship or vessel, or any other person who shall have received or obtained by any means or for any purpose whatever the certificate of the registry thereof, whether he be part owner or not, shall wilfully detain and refuse to deliver up the same to the proper officers of H. M.'s customs for the purposes of such ship or vessel as occasion shall require, it shall be lawful for any owner or owners of such ship or vessel, the certificate of the registry of which shall be so detained and refused to be delivered up as aforesaid, to make complaint on oath against such master or other person of such detainer and refusal to any justice residing near the place where such detainer, &c. shall be in the U. K., or to any member of the supreme court of justice, or any justice of the peace in *Jersey*, *Guernsey*, *Alderney* or *Man*, or in any colony, plantation, island, or territory to H.M. belonging, in *Asia*, *Africa*, or *America*, or *Malta*, *Gibraltar* or *Heligoland*, where such detainer and refusal shall be; and on such complaint the said justice or other magistrate is required, by warrant under his hand and seal, to cause such master or other person to be brought before him to be examined touching such detainer and refusal (*a*); and if it shall appear to the said justice or other magistrate, on examination of such master or other person or otherwise, that the said certificate of registry is not lost or mislaid, but is wilfully detained by the said master or other person, he shall be thereof convicted, and shall forfeit 100*l.*; and on failure of payment thereof be committed to the common gaol, without bail, for such time as the said justice or other magistrate shall in his discretion deem proper, not being less than three months nor more than 12 months. 4 G.4. c.41. Masters detaining certificate of the ship's registry. to forfeit 100*l.*, or be imprisoned.

And the said justice or other magistrate shall certify such detainer, refusal, and conviction to the person who granted such Such detainer to be certified, and a new certificate granted.

(*a*) The K.B. will grant a *habeas corpus* to the warden of the *Fleet* to take the body of a debtor confined there before a magistrate to be examined, from time to time, respecting a charge of felony or misdemeanor. *Ex parte Griffith Griffiths*, 5 *B.* & *A.* 730.

4 G.4. c.41.

certificate of registry of such ship or vessel, who shall, on the conditions of law being complied with, make registry of such ship or vessel *de novo*, and grant a certificate thereof conformably to law, notifying on the back of such certificate the ground upon which the ship or vessel was so registered *de novo*.

48 G.3. c.130. 49 G.3. c.122. 53 G.3. c.87. 1 & 2 G.4. cc.75, 76.

Stats. 48 *G.* 3. *c.* 130., 49 *G.* 3. *c.* 122. & 53 *G.* 3. *c.* 87. are continued and amended by stat. 1 & 2 *G.* 4. *c.* 75. & 76., for which refer to tit. Wreck, *post*.

4 G.4. c.84. Passengers.

By stat. 4 *G.* 4. *c.* 84. The laws for regulating vessels carrying passengers from the U. K. to foreign parts out of *Europe*, and not within the straits of *Gibraltar*, are repealed, and other provisions made in lieu thereof.

4 G.4. c.88. Vessels carrying passengers between *G.B.* and *Ireland*.

By stat. 4 *G.* 4. *c.* 88. § 1. It shall not be lawful for the master or person having the charge or command of any ship or vessel employed in the conveyance of passengers between *G. B.* and *Ireland*, being of less than 200 tons burthen, to have or take on board or to carry or convey any greater number than 20 passengers from any port in *G. B.* to any port in *Ireland*, or from any port in *Ireland* to any port in *G. B.*, unless a licence for the conveyance of passengers shall have been previously granted to the owner, master, or commander of such ship or vessel, under the hand of the collector or chief officer of the customs at the port from which such ship or vessel shall sail, upon such certificate as shall be required by the commissioners of customs, that such ship or vessel is sea-worthy, and properly sound in all respects, such licence to remain in force for one year from its date.

Proportion of passengers.

§ 2. The master or person having or taking the charge or command of any ship or vessel so licensed, is not to have on board at or after being cleared out at any one time, or to convey, carry, or transport from any port or place in *G. B.* or *Ireland* respectively a greater number of persons (exclusive of the ordinary crew) than in the proportion of 5 adults, or of 10 children under 14 years of age, or of 15 under 7, for every 4 tons of the burthen of such ship or vessel, according to the certificate of registry; and if any such ship or vessel shall be partly laden with goods, ware, or merchandise, or horses or carriages, then it shall not be lawful for the master or other person having the charge or command thereof to receive or take on board a greater number of persons (exclusive of the ordinary crew) than in the proportion of 5 adults, or of 10 children under 14, or of 15 under 7 years of age, for every 4 tons of that part of such ship or vessel which shall remain unladen, and such goods shall, at the sight and under the direction of the officer of customs, be stowed in such manner as to leave good, sufficient, and wholesome accommodation for the proportion of persons to be received on board.

Penalty for taking passengers without licence, or more passengers than allowed.

§ 3. If any master or person having the charge or command of any such ship or vessel, shall take on board any passenger, or if the owner of such ship or vessel shall engage to take on board any passenger beyond the number of 20 as aforesaid, without such licence being previously obtained, he shall for every offence forfeit 50*l.* And if any master or other person having or taking the charge or command of any such ship or vessel, shall take on board, or if such master or other person, or the owner of such ship or vessel, shall engage to take on board a greater num-

ber of persons than in the proportion allowed by this act, such master or other person shall forfeit 5*l.* for each, and every or any such person exceeding in number the proportion before limited; and every such ship or vessel so having on board, or carrying or conveying any greater number than 20 persons without such licence, shall be seized and detained by the collector, comptroller, surveyor, or officer of the customs, until such penalty of 50*l.* shall be satisfied and paid. 4 G.4. c.88.

§ 4. It shall not be lawful for any master or other person taking or having the charge or command of any trading or coasting ship or vessel, not being wholly employed in the conveyance of passengers, and not licensed pursuant to this act, whether laden in part or in the whole with goods and merchandize, not being the baggage of any passengers, or shall be employed in the carriage or conveyance of cattle or pigs, or shall be in ballast, and which shall sail from any port in *G.B.* to any port or place in *Ireland*, or from any port in *Ireland* to any port in *G. B.*, to have or take on board a greater number of persons than 10 (exclusive of the ordinary crew), if such ship or vessel shall be of 100 tons burthen or under, nor a greater number than 20, if of a greater burthen than 100 and not exceeding 200 tons; and if more persons shall be found on board than in the proportion allowed, every such master or other person as aforesaid shall forfeit 5*l.* for every person so taken on board beyond such proportion.

Number of persons to be carried by merchant vessels.

§ 5. An abstract of the act to be printed under the direction of the commissioners of customs, and a printed copy thereof to be hung up in the custom-house of every port of the U. K., and a printed copy of such abstract and also a copy of the licence granted to the captain or owners of such ship or vessel, and a notice or statement of the number of persons allowed to be carried and conveyed in such vessel, shall be hung up in some conspicuous place on the deck and in the cabin thereof, and the master or other person having or taking the charge or command of such ship or vessel shall cause the said copies to be kept and renewed under the penalty of 10*l.*

Abstract of the act to be printed, and copies hung up at the custom-house and on board every vessel.

§ 6. This act is not to extend to ships or vessels in the service of H. M., or of H. M.'s post-master general, or of the commissioners of customs and excise, or of the *East India* company; nor to any ship or vessel of the burthen of 200 tons or upwards, nor to any ship or vessel carrying troops.

Not to extend to vessels in service of government, or of E. I. service.

§ 7. All penalties may be recovered within three months in a summary way, by the order and adjudication of any justice for the county or place in which the port shall be situate, from which any such ship or vessel shall depart, or at which it shall arrive, and shall be levied, as well as the costs, on non-payment, by distress and sale of the offender's goods, by warrant under the hand and seal of such justice; and in case the penalty shall not be paid on conviction, the justice is authorised to order the offender to be detained until return can be conveniently made of the warrant of distress, unless the offender give sufficient security to the satisfaction of the justice for his appearance on the day of the return of such warrant, not being more than seven days from the time of taking such security, and which the justice is empowered to

Penalty may be recovered before one justice.

4 G.4. c.88. take by way of recognisance or otherwise; but if no sufficient distress can be had, then the offender shall be committed to gaol for any term not exceeding two calendar months, unless the penalty and all reasonable charges shall be sooner paid and satisfied, one moiety of such penalty to be paid to the person suing for the same, and the other moiety to H. M.

Appeal to the quarter sessions.

§ 8. Gives an appeal to the next general quarter sessions for the county or place, such appellant (if there be sufficient time after the cause of complaint shall have arisen) first giving 10 days' notice at least in writing of his or her intention of bringing such appeal, and of the matter thereof, to the justice whose conviction shall be so appealed against; and within seven days next after such notice, entering into a recognisance before the said justice, or some other justice for the county or place, with two sufficient sureties conditioned to try such appeal, and to abide the order of such justices at sessions therein, and to pay such costs as shall be awarded at such sessions; and for want of sufficient time for giving such notice previous to the quarter sessions next after the cause of complaint, then such appeal after such notice and under such recognisance may be made to the second general quarter sessions to be holden for such county or place, and the justices at such first or second sessions, upon due proof of such notice and recognisance, shall hear and finally determine the cause and matter in a summary way, and shall award such costs to the parties appealing or appealed against as they shall think proper; and may also by their warrant or order cause such costs by distress and sale to be levied on the goods and chattels of the person who shall refuse or neglect to pay the same, and for want of sufficient distress may commit such person to the common gaol or house of correction for the said county, for any time not exceeding two calendar months, or until payment of such costs.

§ 9. 10. No proceedings shall be quashed for want of form, or be removed by *certiorari*. And any action or suit brought against any person acting under the authority of this act, is to be commenced within three calendar months after the fact committed, and in the courts or place where the action arose; and the defendant may plead the general issue, and give this act and the special matter in evidence; and if he obtain a verdict, or if the plaintiff be nonsuited, or discontinue his action, or if upon demurrer judgment be given against the plaintiff, the defendant shall have double costs.

48 G.3. c.104. By stat. 48 *G.* 3. *c.* 104. The former acts relating to pilotage within the jurisdiction of the *Trinity House* and *Cinque Ports, viz.* 3 *G.* 1. *c.* 13., 7 *G.* 1. *c.* 21., 5 *G.* 2. *c.* 20., 43 *G.* 3. *c.* 152., 47 *G.* 3. *stat.* 2. *c.* 70. were repealed, and various regulations were therein

52 G.3. c.39. enacted: and by stat. 52 *G.* 3. *c.* 39. the provisions of stat. 48 *G.* 3. *c.* 104., and all other acts relating to pilotage within the jurisdiction of the *Trinity House* and liberty of the *Cinque Ports* were repealed.

§ 2. Relates to licensing pilots. § 3. To their rates of payment, which are set down in a table in the act.

§ 32. Saves districts having separate jurisdictions. And tables of rates are subjoined to the act.

[So many of the remaining sections of the act, as are thought material in this work, are here inserted.] 52 G.3. c.39.

§ 5. No person shall be licensed by the Trinity House as a pilot for the rivers *Thames* or *Medway*, or the channels leading thereto or therefrom, under this act, who shall not have served as mate for three years on board a square-rigged vessel, or been in the actual command of a square-rigged vessel for one year, or been employed in the pilot service of the Trinity House for seven years, or served an apprenticeship of five years to some pilot vessel licensed under this act; and no person shall be so licensed, or be allowed until after three years' licence and service, to take charge as a pilot of any ship or vessel drawing more than 14 feet water, in the rivers *Thames* or *Medway*, or any of the channels thereof, until such person shall have been licensed, and shall have acted as a pilot for three years under lawful authority, on pain of forfeiting 10*l.* for every such offence, as well by the person acting as such pilot, as also by the master or commander, or other person having charge of such ship or vessel, who shall permit any such person to take charge as a pilot of the same, contrary to the provision aforesaid. Who shall be licensed as a pilot.

§ 6. No person shall take charge of any ship or vessel, as a pilot belonging to the society or fellowship of Cinque Port Pilots before he shall be examined by the master and two wardens, or by four wardens of the said society or fellowship for the time being, touching his abilities, and shall be approved and admitted into the society or fellowship of the Trinity House of *Dover*, *Deal*, and the *Isle of Thanet*, by the lord warden of the cinque ports and constable of *Dover* castle for the time being, or his lieutenant for the time being, on pain for the first offence of 10*l.*, for the second, 20*l.* and for every other offence 40*l.* Penalty for taking charge of any ship before admission.

§ 34. Any licensed pilot may supersede any person not licensed as a pilot in the charge of any ship or vessel within the limits of his licence; and every master who shall continue to act himself as a pilot, or who shall continue any unlicensed person, or any licensed person acting out of the limits for which he is qualified as a pilot, after any pilot licensed to act within the limits in which such ship or vessel shall then actually be, shall have offered to take charge of the ship or vessel; and every person assuming or continuing in the charge or conduct of any ship or vessel without being duly licensed to act within the limits in which such ship or vessel shall actually be, after any pilot duly licensed and qualified to act in the premises, shall have offered to take charge of such ship or vessel; shall respectively forfeit not exceeding 50*l.* nor less than 20*l.* Superseding unlicensed pilots.

§ 46. No person shall take charge of any vessel, or in any manner act as a pilot, or receive any compensation for acting as a pilot, unless he shall be authorised thereto by some lawful licence, nor until such licence shall have been registered by the principal officers of the custom house of the place at or nearest to which such pilot shall reside (which officers are required to register the same without fee or reward), nor without having his licence at the time of his so acting in his personal custody, ready to be produced, and which he shall actually produce to the master of any ship or vessel, or other person who shall be desirous of employing him as a pilot; nor shall any person, although duly- Licence to be registered, and in the pilot's custody.

52 G.3. c.39. licensed to act as a pilot, act in that capacity out of or beyond the limits expressed in his licence, or beyond the extent of his qualification therein expressed, unless in the cases in this act specified, of pilots of a lower class acting in the absence of pilots of higher classes; on pain of forfeiting not exceeding 30*l.* nor less than 10*l.* for the first offence, and for any second or subsequent offence not exceding 50*l.* nor less than 30*l.*

On death of a pilot his licence shall be returned.

§ 47. On the death of any pilot, his executors or administrators, or one of them, or the person or persons to whose hands the licence of such deceased pilot shall come, shall, without wilful delay, transmit such licence to the corporation, company, or persons by whom such licence was granted, on pain of forfeiting for any neglect therein, or for refusal to deliver the same when lawfully demanded, not exceeding 20*l.* nor less than 40*s.*

How pilot boats shall be fitted.

§ 49. Every pilot boat or vessel, or other boat or vessel in the pilot service of any corporation or society established by law in relation to pilotage, or of any persons authorised to act as a pilot by such corporation or society, shall at all times, and on every station, be fitted with black sides, and have the upper strake next the gunwale painted white, and shall, while afloat, carry a vane at the mast head, or else a flag on a sprit or staff, or in some other equally conspicuous situation; which vane or flag shall be of large dimensions, proportioned to the size of the boat or vessel carrying the same, and shall be half red and half white, in horizontal stripes, of which the uppermost shal be white; and the same shall at all times be kept and preserved in a clean and distinct condition, so as to be easily discerned at a proper and sufficient distance; and every such boat or vessel shall also have the name of the principal pilot thereof for the time being, painted in broad white letters, of three inches in length, on a black ground on her stern, and on each bow such number as shall be expressed in the licence of such principal pilot; which name and number shall not be hid or concealed by any person, at any time, on pain of forfeiting 20*l.* for such omission or evasion, to be paid by such principal pilot, who shall at all times be answerable for the due observance of the matters aforesaid, by every person on board such boat or vessel; and every other boat not in the service of any corporation or society carrying off a pilot, shall exhibit a similar flag on a sprit or mast, to distinguish that she has a pilot on board.

§ 50. If any boat or vessel, not having a licensed pilot on board, shall without lawful authority carry such distinguishing vane or flag as aforesaid, the owner, or the master or other person having charge of such boat or vessel, shall forfeit 100*l.*

Penalty on pilots declining to take charge of vessels, or exacting more than the allowed fee, &c.

§ 51. Every pilot licensed by virtue of this act, or otherwise duly licensed, who shall, when disengaged, or on any frivolous pretexts, decline to take charge of any ship or vessel, unless such cause shall be shown by the pilot as shall justify his not taking charge of the ship; or who shall decline, on being required by any captain of any of H. M.'s ships, or by any officer of the society or fellowship to which such pilot shall belong, or the master or other person having the charge of any ship or vessel, to come on board of any ship or vessel; or who shall decline, when required by any commissioned officer in H. M.'s navy, or by any principal officer of H. M.'s customs, or by any person or persons interested as principal or agent for or on behalf

of any ship or vessel wanting a pilot, to go off to and take charge of any ship or vessel, when it shall be safe so to do; or who shall exact or demand or bargain for any greater fee or reward, or any greater price or hire for pilotage, than such as are or shall be allowed by such rates or rules as are or shall hereafter be legally established in that behalf; or who shall in any wise delay going on board any such ship or vessel, or taking charge thereof when on board or alongside thereof; or who shall quit any such ship or vessel, or decline the piloting thereof after he has been engaged or after going alongside thereof, without leave of the captain of any of H. M.'s ships, or of the owner, master, captain, or person having the chief command of any ship or vessel, or before the service shall have been performed for which he was hired; or shall by drunkenness render himself incapable of conducting any ship or vessel, or shall negligently or wilfully run any vessel on shore, or lose the same, or do any injury to the same or to the tackle or furniture thereof; or who shall lend his licence to any unlicensed person, to enable or assist him towards acting or claiming to act as a licensed pilot; shall forfeit not exceeding 100*l*. nor less than 10*l*. 52 G.3. c.39.

Pilots requiring masters to employ any boat, &c. beyond what is necessary.

§.52. In case any pilot, licensed by virtue of this act, shall employ or make use of, or shall compel or require any person having the command or charge of any ship or vessel, to employ or make use of any boat, anchor, cable, hawser, or any other matter or thing, in or for the service or pretended service of such ship or vessel, beyond what shall actually and *bonâ fide* be necessary and proper for the use thereof, with intent thereby to enhance or increase the charge or expence of pilotage or pilot assistance of such ship or vessel, whether for the gain and emolument of such pilot, or of any other person whomsoever; the person so offending shall forfeit not exceeding 50*l*. nor less than 10*l*.

Certain acts relating to the local regulation of pilots extended to this act.

§ 66. All acts of parliament, and all clauses, &c. penalties and forfeitures contained in any act which in any manner relate to the regulation of pilots or pilotage within any river, port, or harbour, or within any local limits specified in any such act, clause, or provision, and in which any reference is made to the said act of the 48 *G*.3. aforesaid, or in any manner apply thereto, or vary or alter any of the provisions thereof as to pilots or pilotage within any such limits, shall continue in full force, notwithstanding the repeal of the said act.

Riding by, &c. any buoy or beacon.

§ 68. Every person who shall ride by, make fast to, or remove, or wilfully or negligently run down or run foul of any vessel appointed or placed to exhibit lights, or any buoy or beacon belonging to the said Trinity House, or belonging to or placed by any other corporation having lawful authority to place the same, shall forfeit not exceeding 50*l*. nor less than 10*l*. together with the expence of replacing or making good any damage occasioned by such misconduct.

How penalties not exceeding 20*l*. may be recovered.

§ 71. All fines, penalties, and forfeitures, which are by this act imposed, or which shall be imposed by any bye-law made under the authority thereof, the manner of levying whereof is not otherwise expressly directed, which shall not exceed 20*l*., or in respect of which the party prosecuting shall proceed for any sum not exceeding 20*l*., which in all cases it shall be lawful for him to do, with the consent of the Trinity House, or of the said

52 G. 3. c. 39. lord warden for the time being, or his lieutenant for the time being, in the cases in this act before mentioned, notwithstanding a greater penalty might otherwise be recoverable, may be levied and recovered within six calendar months after the offence or offences committed, or within such other time as is hereinafter in that behalf directed, before any justice for the county, city, division, or place where the offence shall be committed; or if committed by any pilot, before any justice of the peace or magistrate of the city, town, or port to which such pilot shall belong; or if committed by any owner or master of any ship or vessel, by any justice of the peace or magistrate of the county, city, town, or port, at which such owner or master shall reside, or to which the ship of such owner or master shall belong; or if committed by any pilot of the Trinity House of *Deptford Strond*, or of the cinque ports, or by any other person, on any part of the sea from *Orfordness* to the mouth of the river *Thames*, or from *Dungeness* to the mouth of the river *Thames*, or upon the rivers *Thames* or *Medway*, then by any justice of the peace of the counties of *Kent*, *Surrey*, *Essex*, or *Middlesex*, or by any magistrate of the city of *London;* and such justice is empowered and required, upon complaint to him or them made, to grant a warrant to bring before him such offender; and if on conviction on confession, or on the evidence of any one witness upon oath, such fine, &c. be not forthwith paid, the justice is empowered to commit the offender to the common gaol or house of correction for the county, &c. where he shall be convicted, there to remain without bail or mainprize for any time not exceeding six calendar months, nor less than 21 days, unless such fine, &c., and all reasonable charges attending the recovery thereof, shall be sooner paid.

Justices of any county into which an offender shall escape, may indorse the original warrant, which shall authorise the peace officers to execute it, &c.

§ 74. In case any offender, before or after conviction, shall escape, go into, or reside or be in any other county, &c. not within the jurisdiction of the justice granting such warrant, any justice of the county, &c. into which such person shall so escape, is authorised and required, upon proof made upon oath of the handwriting of any justice granting such warrant, to indorse his name thereon, which, when so indorsed, shall be sufficient authority to all peace officers to execute it in such other county, &c.; and any justice, on the offender being apprehended and brought before him within his jurisdiction, may hear and determine the complaint, as if it had originally arisen within his jurisdiction, and may direct the offender to be carried to the justice who granted the original warrant, to be dealt with according to law.

Application of penalties.

§ 75. One-third of all fines or penalties by whomsoever incurred shall go to the person who shall inform or sue for the same, and the remainder shall be paid to the fund of the Trinity House at *Deptford Strond*, and applied, after defraying thereout the expences of carrying this act into execution, in the same manner as the other funds of the said corporation are by law or usage applicable, in case such fines or penalties shall be incurred by pilots licensed by the said corporation, or by any other person or persons, in relation to any matters wherein such last-mentioned pilots shall be in anywise concerned; and in case such fines or penalties shall be incurred by pilots of the cinque ports, or by pilots under any other jurisdiction or authority, or by any other

person or persons in relation to any matters wherein pilots shall be in anywise concerned, then the remaining two-thirds of such last-mentioned fines or penalties shall go to such fund as hath been or shall be established by the persons having the direction of the cinque port or other pilots, and shall be applied to the use of such respective funds, after defraying the respective expences incurred in carrying this act into execution. 52 G.3. c.39.

Witnesses not appearing, may be committed to the house of correction.

§ 76. If any person summoned as a witness before any justice, shall refuse or neglect to appear, having no just cause for such neglect or refusal, it shall be lawful for such justice, on proof of such summons having been served, and of a tender of reasonable expences having been made, to issue his warrant to bring such person before him; and if on appearance, he shall refuse to be examined on oath concerning the premises, without having some just cause for such refusal, it shall be lawful for such justice to commit such person to the house of correction of the county, &c. where he shall be apprehended, there to remain for any time not exceeding six months nor less than 14 days.

§ 78. Form of conviction:

BE it remembered, that on the ——— *day of* ———, *in the year of our Lord* ———, A. B. *is convicted before me* [or, *us*] —— *one* [or, *two*, as the case may be,] *of his majesty's justices of the peace for the* ——— [here specify the offence, and the time and place when and where committed, as the case may be,] *contrary to an act passed in the fifty-second year of the reign of king* George *the third, intituled* [here insert the title of this act], *and I* [or, *we*] *do adjudge that he hath therefore forfeited the sum of* [here insert the penalty]. *Given under my hand and seal,* [or, *our hands and seals,*] *the day and year first above written.*

Appeal may be made to the quarter sessions, who may finally determine the matter, and award costs.

§ 79. It shall be lawful for any person so convicted of any offence against this act, or against any rule, order, or bye-law made in pursuance thereof, within three calendar months next after such conviction, to appeal to the general quarter sessions for the county, &c. where the matter of appeal shall arise, first giving ten days' notice of such appeal to the person appealed against and of the matter thereof, and within fourteen days next after such notice entering into a recognisance before some justice for such county, &c. with sufficient sureties conditioned to try such appeal; and for abiding the determination of the court therein; and such justices shall upon proof of such notice and recognisance hear and determine the matter of such appeal, and either confirm or quash the said conviction, and award costs, as to them shall seem just and reasonable; and the decision of the said justices therein shall be final.

[Here follow, in the act, the tables of rates of pilotage.]

See stat. 55 *G.* 3. *c.* 87. To relieve certain foreign vessels resorting to the port of *London* in respect of pilotage, and to regulate the mode of payment of pilotage on foreign vessels in the said port. 55 G.3. c.87.

By § 1, 2. The corporation of Trinity House are empowered to make regulations in relation to pilotage of small foreign ships, and payment thereof.

§ 3. Ascertains and settles the amount of pilotage on foreign vessels outwards.

55 G.3. c.87. § 4. A certificate of payment of pilotage is to be given; and no foreign ship or vessel shall be cleared at the office of customs in the port of *London* on her outward-bound voyage without the production of such certificate.

As to larceny from ships, &c. on navigable rivers, see tit. Larceny, Vol. III. p. 268.

Plundering ships in distress, cutting away or defacing buoy, ropes, &c. See *post*, tit. Wreck.

See also Vol. II. tit. Emigration. Vol. V. tit. Wreck.

Shire Hall.

[9 G.3. c.20. — 14 G.3. c.59.]

9 G.3. c.20. To be repaired by order of sessions.

BY stat. 9 *G.*3. *c.*20. the justices in sessions, on presentment of the grand jury at the assizes of the ill state and condition of the shire hall, or other building commonly used for holding the assizes or grand sessions, and the necessity of repairing the same, may order it to be repaired in such manner as they shall think fit, and the money to be levied as for other county rates.

Sudden repairs. § 3. And if there be occasion for sudden repairs, which will not cost more than 30*l.* two justices, after having viewed the same, and an estimate having been made by able workmen of the expences thereof, may order it to be repaired, and the money to be levied as aforesaid, as if it had been presented by a grand jury.

When repaired by particular places or persons. § 2. 4. Provided, that where the same hath for time out of mind been repaired at the expence of any particular places or persons, or any particular places or persons are bound by law and ancient usage to furnish the same with benches, tables, rails, or other fixtures, they shall continue liable as before.

14 G.3. c.59. May be ventilated. By stat. 14 *G.*3. *c.*59. The justices in their quarter sessions may direct the shire hall or other court of justice within their jurisdiction to be properly ventilated; the expences thereof to be paid out of the general county rate.

Shoemakers. See Vol. II. tit. Excise, § IV. 9. Vol. III. tit. Leather, and *ante*, tit. Servants.

Silks.

[13 & 14 C.2. c.15. — 9 & 10 W.3. c.43. — 3 G.3. c.21. — 5 G.3. c.48. — 22 G.3. c.40.]

FOR sundry matters relating to silks and calicoes, see the article of *linen cloth*, in title Excise, Vol. II.

Concerning servants and other workmen in the silken manufactories, see title Servants, § XIII.

By stat. 13 & 14 *C.*2. *c.*15. § 2. No person shall exercise the trade of a silk thrower unless he hath served seven years' apprenticeship; on pain of 40*s.* a month, half to the king, and half to him that shall sue in any court of record, or at the assizes, or quarter sessions of the peace. 13 & 14 C.2. c.15. Silk thrower.

By stat. 9 & 10 *W.*3. *c.*43. § 1. No foreign silks, called alamodes or lutestrings, shall be imported but in the port of *London*, on notice first given to the commissioners of the customs, and licence had from them. 9 & 10 W.3. c.43. Alamodes and lutestrings.

§ 3. And if they be imported elsewhere, or without such notice and licence, and the duties paid, they shall be forfeited or the value thereof, and be sold and exported again; and the offender so importing, and also the receiver and person offering to sell the same, shall forfeit 500*l.*

§ 2. And the commissioners shall cause them to be marked and sealed.

§ 5. If any person shall counterfeit the custom-house seal, or seal of the lutestring company, he shall forfeit 500*l.*, and be set in the pillory (*a*) two hours.

§ 5. And any person who shall buy and sell or have in his custody any alamodes or lutestrings, sealed or marked with a counterfeit seal or mark, shall forfeit the same, and 100*l.*

§ 5. Any person authorised by a writ of assistance under the seal of the exchequer, or with a constable or other public officer, inhabiting near the place, with a warrant from a justice of the peace and in the daytime, may enter any house, shop, cellar, warehouse, or other place, to search for and seize any alamodes or lutestrings imported contrary to this act, or not sealed and marked as aforesaid, or marked with a counterfeit mark or seal, and in case of resistance may break open doors, chests, trunks, and other package; and every justice shall grant such warrant to any credible person making oath that he hath reason to suspect or believe that there are some of the said silks so fraudulently imported or not sealed and marked, or sealed and marked with a counterfeit seal or mark, in the place or places where he intends to search.

§ 6. And all officers belonging to the customs, sheriffs, mayors, bailiffs, constables, and other officers, shall be aiding in the execution thereof.

[But none but custom-house officers or persons deputed by the lutestring company, and having writs of assistance from the exchequer, shall seize lutestrings or alamodes within the bills of mortality. 5 *An. c.* 20. § 3.] 5 An. c. 20.

§ 9. The said penalties shall be two-thirds to the king, and one-third to him that shall seize or sue in any court of record.

By stats. 3 *G.*3. *c.* 21. and 5 *G.*3. c. 48. If any person shall import or cause to be imported any ribands, laces, or girdles, not made in *G. B.*, whether the same shall be wrought of silk alone or mixed with other materials, the same shall be forfeited, and may be seized by any officer of the customs in whatever importer's, 3 G.3. c.21. 5 G.3. c.48. Ribands laces.

(*a*) But see Vol. III. stat. 56 *G.*3. *c.*138. *title* Pillory, &c.

3 G.3. c.21. 5 G.3. c.48. vender's, or retailer's hands they may be found; and the importer and every person assisting therein, and the venders and retailers in whose custody they shall be found, or who shall sell or expose the same to sale, or conceal with intent to prevent the forfeiture, shall forfeit respectively 200*l.* with costs. Half the said penalties to be to the king, and half to the officer who shall inform and prosecute.

But if any officer of the customs shall neglect or refuse, for one month after condemnation, to prosecute to effect any person for any of the said pecuniary forfeitures, any other person may sue for and recover the same; half thereof to go to the king in like manner, and half to him who shall sue.

And when the goods seized (being out of the limits of the bills of mortality) shall not exceed the value of 20*l.*, two justices, on information before them that such goods were seized as unduly imported, and not manufactured in this kingdom, may hear and determine the same, and proceed to condemnation or discharge.

After seizure, until condemnation or discharge, the said goods shall be deposited in one of the king's warehouses, if the seizure be within the bills of mortality; elsewhere, in the hands of the chief magistrate of the place, or constable of the next adjacent village; and the same shall be free to inspection, with leave of the court, judge, or justices, before whom the prosecution shall be.

And after condemnation, the said goods shall be publicly sold by the candle for exportation; half of the produce by such sale to be to the king, and half to the officer, who shall seize and secure the same; and the same goods shall not be delivered out of the warehouse till security shall be given for exportation, and the same shall not be landed again in any part of H. M's dominions.

On information in writing upon oath before two justices, that there is good ground and reason to suspect that such ribands, laces, or girdles have been imported, and are concealed by or in the possession or custody of any retailer or seller of ribands, laces, or girdles, contrary to the true intent of this act, they may issue their warrant to the constable or other peace officer, empowering him to search, in the daytime, the houses, out-houses, warehouses, shops, cellars, rooms, and other places of such persons, and (if the same shall be found,) to seize and carry away the same, and dispose thereof as is aforesaid.

If any doubt shall arise where the said goods were manufactured, the proof shall lie upon such person in whose custody they were found, and not upon the prosecutor; and if no proof shall be given that they were manufactured in *G. B.* the same shall, without any further proceeding, be taken to have been manufactured out of *G. B.*

Provided, that if any person in whose possession such goods shall be seized (such person not importing or concealing the same) shall discover upon oath before one justice the person who sold the same to him, so as he may be convicted as the seller thereof, such person shall be discharged of all penalties and forfeitures inflicted by this act on vendors or retailers having such goods in their possession.

Nothing herein shall extend to subject any person who shall wear or make use of such ribands, laces, or girdles, as part of their apparel or dress only, to any forfeiture or pecuniary penalty, or to any proof that they were manufactured in *G. B.* 3 G.3. c.21. 5 G.3. c.48.

By stat. 5 *G.* 3. *c.* 48. If any foreign manufactured silk stockings, silk mitts, or silk gloves, shall be imported into this kingdom, or any part of the *British* dominions, the same shall be forfeited, and liable to be searched for and seized as other uncustomed goods; and every person who shall import the same, or be assisting therein, and the vendors and retailers of silk stockings, mitts or gloves in whose custody they shall be found, or who shall sell or expose to sale, or conceal the same with intent to prevent the forfeiture, shall, over and above the goods, forfeit 200*l.* with costs; half to the king, and half to the officer who shall inform and prosecute. 5 G.3. c.48. Stockings, mitts, and gloves.

And when the goods seized (being out of the limits of the bills of mortality) shall not exceed the value of 20*l.*, two justices may proceed to the condemnation thereof. And the proceedings, in all other respects, shall be in like manner as in the case of ribands and laces above mentioned.

22 *G.* 3. *c.* 40. § 2. Enacts, "that if any person or persons shall, by day or by night, break into any house or shop, or enter by force into any house or shop, with intent to cut or destroy any velvet, wrought silk, or silk, mixed with any other materials, or other silk manufacture in the loom, or any warp or shute, tools, tackle, or utensils; or shall wilfully and maliciously cut or destroy any velvet, wrought silk, or silk mixed with any other materials, or other silk manufacture in the loom, or any warp or shute, tools, &c. prepared or employed in or for the making thereof; or shall wilfully and maliciously break or destroy any tools, tackle, or utensils used in or for the weaving or making of any such velvet, &c. or other silk goods or silk manufacture, not having the consent of the owner so to do, every such offender, being thereof lawfully convicted, shall be guilty of felony, without benefit of clergy." 2 *East's P. C.* 1077. 22 G.3. c.40. Breaking house or shop, with intent to cut, or destroy velvet, silk, &c. or any warp, shute, tools, &c.

Slander.

[3 Ed. 1. c. 34. — 2 R. 2. st. 1. c. 5. — 12 R. 2. c. 11.]

I DO not find it any where clearly settled how far slander or scandalous words become objects of the criminal jurisdiction, and so cognisable before justices of the peace, by reason of the different circumstances in matters of so indeterminate a nature; for the same words, when spoken of different persons, and even of the same person with a different emphasis and manner of delivering them, may receive a very different interpretation.

In general, it seemeth that words which directly tend to a breach of the peace, as if one man challenge another, are cognisable before justices of the peace; for which the party may be

bound to the good behaviour, and even indicted. 2 *Salk.* 698. 1 *Keb.* 931.

But if they do not tend directly to a breach of the king's peace, but are matters only of private slander between party and party, which no way affect the public administration of justice, as in case where the common people are wont to call one another knaves, and rogues, and whores, and thieves; I do not find it asserted by any good authority that justices of the peace have any jurisdiction at all in such matters; but the proper remedy seems to be in one of these two ways, either by a prosecution in the spiritual court, or by an action upon the case at the common law.

Scandalum magnatum.

There is one species of slander, of which the law takes a more special notice; and that is, when it relates to the great men of the realm, concerning whom it is enacted by stats. 3 *Ed.* 1. *c.* 34. 2 *R.* 2. *st.* 1. *c.* 5. and 12 *R.* 2. *c.* 11., *that none shall tell or publish any false news or tales, whereby discord, or occasion of discord, or slander, may grow between the king and his people, or the great men of the realm; and that none shall devise, speak, or tell any false, news or lies of any prelates, lords, judges, or other great men of the realm, whereof any discord or slander may arise; on pain of imprisonment until he hath brought into court the first author of the tale; if he cannot find the author, he shall be punished by advice of council.*

Publish any false news or tales.] But this extends only to extra-judicial slanders; for if a man charge them in due course of law, although the charge be false, yet there will lie no action *de scandalis magnatum*, neither at common law, nor by the statutes. 2 *Inst.* 228.

Smugglers. See Excise.

Snares. See Game.

Snuff. See Tobacco.

Soap. See Excise.

Sodomy. See Buggery and Robbery.

Spirituous Liquors. See Excise.

Squibs. See Fireworks.

Stabbing. See Homicide.

Stage Coaches.

[25 G. 3. c. 51. — 50 G. 3. c. 48. — 55 G. 3. c. 185. — 59 G. 3. c. 96. — 1 G. 4. c. 4. — 3 G. 4. c. 95.]

THERE are various regulations respecting stage coaches, and it has therefore been deemed expedient to insert them together in a separate title.

By stat. 55 *G.* 3. *c.* 185. The under-mentioned duty shall be paid upon every licence to be taken out yearly by the person or persons who shall keep any coach, berlin, landau, chariot, calash, chaise marine, chaise, diligence, or other carriage with two or more wheels, by whatsoever name the same may be called or known, to be employed as a stage coach or carriage for conveying passengers for hire to or to and from any place or places in *G. B.* that is to say, for each such coach or other carriage 10*s.* 55 G. 3. c. 185

§ 11. Enacts, that after the 25th *March*, 1816, all such parts of any acts of parliament as authorise the commissioners of hackney coaches to license any hackney coaches to be used as stage coaches, and as exempt the owners of hackney coaches already so licensed from taking out licences from the commissioners of stamps, and from the payment of the mileage duties on stage coaches, and from the provisions of any acts relating to stage coaches, are repealed; and the owners of hackney coaches now employed as stage coaches shall be liable to take out licences from the commissioners of stamps, and be subject to such and the same duties and to such and the same provisions and regulations as the owners of any other stage coaches. See stat. 44 *G.* 3 *c.* 88. § 1. *c.* 98. Sch. (B).

Hackney coaches employed as stage coaches.

§ 12. Enacts, that none of the provisions of any act of parliament relating to hackney coaches shall extend to prevent the owners or drivers of stage coaches, duly licensed by the commissioners of stamps, and paying the mileage duty, from taking up passengers, within the bills of mortality, out of the paved streets of *London* or *Westminster* or borough of *Southwark*, and any continuation thereof, so that they do not deviate from their regular road for that purpose.

Stage coaches not to be prohibited from taking up passengers in bills of mortality.

And by stat. 25 *G.* 3. *c.* 51. § 49. Every person shall, at the time of receiving such licence, declare *from* what place and *to* what place such carriage is intended to be used, distinguishing the number of miles between the two extreme towns or places such carriage is intended to go, and the number of journies the same is intended to be used, either in the day or in the week, that the same may be inserted in such licence; and such person shall give bond to H. M. in 20*l.* or treble the sum the duty for the journies inserted in such licence for one month would amount unto, at the option of the commissioners, for accounting for and paying such sums as may be due for such journies.

25 G. 3. c. 51. Stages, &c. to be entered in the licence.

By stat. 3 *G.* 4. *c.* 95. § 14. All licences then in force were to continue until 31st of *August*, 1822, and all licences to be granted at any time after the passing of that act, and before the 1st of *August*, 1823, shall expire on the 31st of *July* in that year.

Licences in force to continue until 31st *August*, 1823.

By stat. 3 *G.* 4. *c.* 95. § 1. It is enacted that from and after the 1st day of *September*, 1822, the duties mentioned in the schedule annexed to stat. 55 *G.* 3. *c.* 185., and thereby made payable upon stage coaches or other carriages with two or more wheels, which should be employed as public stage coaches or carriages for conveying passengers for hire to or to and from any place or places in *G. B.*, as far as the same relates to carriages or vehicles drawn by one or two horses, and not being upon or having the aid or assistance of any spring or springs, or (if drawn by one horse) being upon or having the aid or assistance of any spring or springs, or if drawn by two or more horses, and such carriages or vehicles shall be made for the accommodation of one description of passengers only,

3 G. 4. c. 95. Duties on certain stage coaches repealed.

3 G.4. c.95.

not distinguishing between inside and outside passengers, and shall be upon or have the aid or assistance of any spring or springs, shall cease, determine, and be repealed; except as to so much of the said duties as shall have become due before or upon the said 1st day of *September*, and shall remain in arrear.

New duties.

§ 2. Enacts, that from and after the said 1st day of *September*, in lieu of the said duties hereby repealed, there shall be paid throughout the whole of *G.B.* the rates and duties following, that is to say, for and in respect of

	£.	s.	d.
Any carriage or vehicle with two or more wheels not being upon, or not having the aid or assistance of any spring or springs of any kind whatsoever, and which shall be kept, used, employed, or let out for the purpose of conveying passengers for hire, to or from, or from and to, different places in *G.B.*, and drawn by one horse only, for every mile that any such carriage or vehicle shall be licensed to travel, - - - - -	0	0	1
Any such carriage or vehicle as above described, drawn by two horses only, for every mile, &c. -	0	0	2
Any carriage or vehicle, drawn by one horse only, being upon or having the aid or assistance of any spring or springs of any kind whatsoever, for every mile, &c. - - - - -	0	0	1½
Any carriage or vehicle drawn by two horses only, being upon or having the aid or assistance of any spring or springs of any kind whatsoever, not distinguishing between inside and outside passengers, for every mile, &c. - - - - -	0	0	3
And any such carriage or vehicle as last mentioned, drawn by three or more horses, for every mile, &c.	0	0	4½

Plates to be placed on carriages.

§ 3. Immediately after the passing of this act, the commissioners of stamps in *G. B.* are required to provide proper plates, at the expence of the person applying for a licence, each plate or pair of plates having thereupon a distinct number, to be named by the said commissioners, for the purpose of being fixed upon the door, or if more than one, upon each door, or upon some other part of every carriage or vehicle (except mail coaches and hackney coaches duly licensed); and to alter and renew such plate or plates from time to time, as the said commissioners shall think necessary, or as occasion shall require; and the said commissioners are to deliver to the person applying for such licence such plate or plates to be placed upon every such carriage, &c.; and to insert in the licence the number of the plate or plates so delivered in respect of such carriage.

Plates to be affixed on each door of such carriages.

§ 4. After the 31st day of *August*, 1822, it shall not be lawful for any person to use, employ, or let out, or to permit or suffer to be used, employed, or let out, any carriage or vehicle for conveying passengers for hire, before fixing on the door, or if more than one, upon each door, or if there be no door, upon one of the pannels on each side of such carriage or vehicle, or if there be no pannels, then upon some conspicuous part or parts of such carriage or vehicle, one of the plates required to be fixed thereupon; and in case such plate shall at any time be broken or become

illegible, the person or persons to whom any such licence shall be granted shall, within three days after such plate shall be broken or become illegible, apply to the said commissioners of stamps, or to the person authorised to grant such licence, for a new plate or new plates; and on delivery to the said commissioners, or to such person, of the old plate or plates, or part thereof, the said commissioners of stamps are empowered to deliver a new plate or new plates of the same, or any other number, to the persons whose plate or plates shall have been broken or become illegible, which new plate or new plates such persons are required, as soon as conveniently may be after the receipt thereof, to affix on such carriage or vehicle. 3 G.4. c.95.

§ 5. If any person shall, after the said 31st day of *August*, keep, use, employ, or let out, or permit or suffer to be used, employed, or let out, any carriage or vehicle for the purpose of conveying any passenger or passengers for hire to or from or from and to different places in *G. B.*, not having the plate or plates fixed thereupon as hereby directed, or having any plate or plates fixed on such carriage or vehicle, of a different or other number than that mentioned in the licence granted to such person or persons, or having any broken or illegible plate or plates on any such carriage or vehicle, such person or persons so offending in any or either of the said cases shall forfeit, for every day on which such carriage or vehicle shall be so used, employed, or let out for hire, the sum of 20*l.*: provided, that nothing herein contained shall be construed to charge any person or persons with the said penalty of 20*l.*, to which he, she, or they may become subject, between the time of any such plate or plates having been broken or become illegible, and the time hereby allowed for affixing or placing a new plate or plates on such carriage or vehicle as aforesaid, in the place of any plate or plates that may have become broken or illegible.

Penalty on not having such plates, 20*l.*

§ 6. Every carriage or vehicle used, employed, or let out for the purpose of conveying passengers for hire to or from or from and to any place or places in *G. B.*, and travelling at the rate of three or more miles in the hour, shall, without regard to the number of wheels, or to the number of horses by which the same may be drawn, or to the number of passengers which the same shall or may be able or fitted to contain or carry, or to its being an open or close carriage, be deemed and taken to be a stage coach or carriage within the meaning of this act, or any former act or acts relating to the duties on carriages or vehicles kept, used, and employed, or let out for the purpose of conveying passengers for hire; provided the passenger or passengers to be carried or conveyed by any such carriage or vehicle, shall be charged, or shall pay separate and distinct fares, or a separate and distinct fare, or be charged at the rate of separate and distinct fares, for his, her, or their place or seat, or places or seats therein, or conveyance thereby respectively.

What shall be deemed a stage coach.

§ 7. In all actions, bills, plaints, informations, or proceedings, to be commenced and prosecuted, &c. in any of H. M.'s courts of *G. B.*, or before any justice of the peace or other magistrate in *G. B.*, against any persons, for the recovery of any duty, fine, penalty, or forfeiture incurred under this or any former act relating to the duties on carriages or vehicles, kept, used, employed.

What shall be deemed a carriage or vehicle within the meaning of this act.

3 G.4. c.95.

or let for the conveying passengers for hire, if evidence shall be offered and given that the carriage or vehicle in respect of, or in any manner relating to which, any such action, &c. or proceeding shall be commenced, &c., was seen travelling upon any turnpike road or public highway in *G. B.*, such carriage or vehicle having fixed thereupon a plate or plates as required by this act, or having painted or marked thereupon any of the particulars required by any former act, such carriages or vehicles shall (unless the contrary be proved) be deemed and taken to be a carriage or vehicle kept, used, employed, and let out for the purpose of conveying passengers for hire to or from or from and to different places in *G. B.*; and that in all such actions, &c. or proceedings, the persons described in the licence granted in respect of such carriage or vehicle shall (unless the contrary be proved) be considered as person to whom such carriage or vehicle doth belong, and shall be liable to the duty or penalty imposed by this or any former act.

Persons authorised to examine plates, may enter toll houses.

§ 8. It shall be lawful for any persons duly authorised to examine the plates by this act directed to be fixed and placed upon carriages or vehicles used or employed for the purpose of conveying passengers for hire, from time to time to enter into and remain in any toll house or other place, at the gate or bar of which any toll is by law payable, for the purpose of examining such plates.

Penalty on toll collectors or others impeding persons executing this act, 20*l*.

§ 9. If any toll collector or toll-gate keeper, or any other person, shall refuse to permit any persons authorised to examine the plates directed to be fixed and placed upon carriages or vehicles, used, employed, or let out for the purpose of conveying passengers for hire, from time to time to enter into and remain in any toll house or other place, at the bar or gate of which any toll is by law payable; or shall obstruct, or hinder, or molest such persons in entering into and remaining in such toll house or place as aforesaid, for the purpose of examining such plates; or if any toll collector or toll-gate keeper, or any other person shall in any way hinder, molest, interrupt, or disturb any such persons authorised to examine such plates, in the reasonable use of such toll house or other place as aforesaid, for the purpose aforesaid, every such toll collector or toll-gate keeper, and every person aiding and assisting him, and every person offending in any of the cases aforesaid, shall for every such offence forfeit the sum of 20*l*.

Carriages, horses, &c. made liable for the payment of the duty.

§ 10. And from and after the said 31st day of *August*, every carriage or vehicle in respect whereof any duty is imposed, or which shall become payable under this act, or by stat. 55 *G.* 3. c. 185. and the schedule thereto, and all horses and harness, and all other articles and things used for the purpose of drawing such carriage or vehicle in the custody of the persons to whom any such licence shall have been granted, or in the custody of any other person to the use and for the account of or in trust for such persons, or any of them, shall be liable to and chargeable with all the duties in arrear, or which shall become due from time to time from such persons, in respect of such carriage or vehicle kept, used, or employed by him, her, or them respectively, for the purpose of conveying passengers for hire.

If drivers of stage coaches take up passen-

§ 13. And whereas difficulties have arisen in proceedings for penalties under stat. 1 *G.* 1. *c.* 57. by reason of the persons giving information being unable to prove the payment of the fare

paid or to be paid by any person carried in or upon any coach or other carriage used for the purpose of conveying passengers for hire; it is enacted, that from and after the passing of this act, (30th *July*, 1822,) in all cases where any coach or other carriage used for the purpose of conveying passengers for hire, shall take up any passenger after such coach or other carriage shall have entered the paved streets of *London*, *Westminster*, or the borough of *Southwark*, and shall carry and convey such passenger along the said paved streets, or any of them, the proprietor of such coach or carriage, or the driver thereof, shall be deemed and taken to be a person standing, driving, and plying for hire within the meaning of that act, unless the contrary shall be shown.

3 G.4. c.95.

gers after entering the paved streets of London, &c. they shall be deemed persons plying for hire under 1 G.1. c.57.

§ 15. All the powers, provisions, clauses, regulations, and directions, fines, forfeitures, pains, and penalties, contained in and imposed by the several acts, relating to the duties upon stage coaches, or other carriages used for the purpose of conveying passengers for hire, shall be of full force and effect with respect to the duties hereby granted.

Powers of former acts relating to duties on stage coaches, &c. extended to this act.

By stat. 50 *G.* 3. *c.* 48. The several acts, 28 *G.* 3. *c.* 57., 30 *G.* 3. *c.* 36., and 46 *G.* 3. *c.* 136., are recited and repealed.

50 G.3. c.48.

By § 2. Any coach, berlin, landau, chariot, diligence, calash, chaise marine, or other carriage with four or more wheels, by what name soever called or known, to be employed as a public stage coach or carriage, for the purpose of conveying passengers for hire to and from different places in *G. B.* and drawn by four or more horses, shall be allowed to carry ten outside passengers, and no more, exclusive of the coachman, but including the guard, where there is a guard; and one passenger, and no more, shall be allowed to sit upon the box with the coachman, and three of such passengers on the front of the roof, and the remaining six behind, in the manner the most safe and convenient for the said passengers: provided, that no such passenger shall be allowed to sit on the luggage, or that part of the roof allotted for the same; and that all stage coaches or other carriages above described, drawn by two or three horses, shall be allowed five outside passengers and no more, exclusive of the coachman; and that all stage coaches, called *long coaches* or *double-bodied coaches*, shall be permitted to carry eight outside passengers and no more, exclusive of the coachman, but including the guard, where there is a guard, under such fines or penalties as are by this act imposed, in cases where more outside passengers are carried than are allowed by this act; such fines and penalties to be imposed and levied upon the owners or proprietors of any such coach or other carriage, or any one or more of them, or any person driving the same, in the manner after mentioned: provided, that no child in the lap, or under seven years of age, shall be included in or counted as one of such number, unless there shall be more than one; and if more than one, that two of such children shall be accounted equal to one grown person, and so on in the same proportion; and that no person paying as an outside passenger shall be permitted to sit or remain as an inside passenger, unless with the consent of one of the inside passengers at the least conveyed by such coach or other carriage, and next to whom such outside passenger shall be placed: and provided also, that where such coach or other carriage is of a construction peculiarly wide or commodious, and

Limiting the number of persons to be carried by stage coaches as outside passengers, &c.

50 G.3. c.48. being so found shall be duly licensed for that purpose, four outside passengers instead of three shall be allowed to sit on the front of such coach or other carriage: provided always, that the number of outside passengers shall not exceed ten in all.

In *R.* v. *Barker*, 3 *East*, 504. It was held on stat. 28 *G.* 3. *c.* 57. that one might be convicted as *the driver* of a stage coach, for permitting and suffering beyond the proper number of persons to go upon the roof of it, although he be not stated to be a driver *employed* by the owner, and although he *did not appear when summoned* before the magistrate, in which case the 2d section of the act directs *that the owner shall be liable to the penalty thereby laid on such driver.*

Neither luggage nor outside passengers shall be carried, unless the coach be of the height herein mentioned.

§ 3. It shall not be lawful for any driver, owner, or proprietor of any such coach or other carriage, going or travelling for hire, to permit or suffer in any manner or way any luggage to be carried on the roof of any such coach or other carriage, or any person to ride or go as an outside passenger on or about the outside of any such coach or other carriage, the top of which shall be more than eight feet nine inches from the ground, or the bearing of which on the ground shall be less than four feet six inches from the centre of the track of the right or off wheel, to the centre of the track of the left or near wheel, under the penalty of

Penalty.

5*l.* for each offence, to be recovered and applied in the same manner as any penalty for more outside passengers than are allowed by this act can be recovered and applied.

No luggage, exceeding a certain height, to be carried on the roof of any coach.

§ 4. It shall not be lawful for any driver, owner, or proprietor of any such coach, mail coach, or other carriage going or travelling for hire, to carry or permit or suffer any parcel or parcels, or luggage whatever, exceeding two feet in height, to be conveyed on the roof of any such carriage drawn by four or more horses; and where carriages are drawn by two or three horses, then such luggage not to exceed 18 inches above the roof; and every such driver so offending, and any owner or proprietor of any such carriage, where such driver is not known or cannot be found, being convicted of such offence, either by his or her own confession, the view of a justice of the peace or other magistrate, or the oath or oaths of one or more credible witness or witnesses, before any justice of the peace or other magistrate acting in and for the county, or place where any offence shall be committed, shall forfeit and pay the sum of 5*l.* for every inch above the space of two feet or of 18 inches respectively above allowed; and in case the driver so offending shall be the owner of such carriage, he shall forfeit the sum of 10*l.* for every inch above the spaces respectively above allowed; and in default of payment of the said penalties respectively, the offender shall be committed to the common gaol or house of correction of the county or place where such offence shall have been committed, for two months, unless

Packages to be placed so as no passenger shall sit thereon.

such penalties shall be sooner paid: provided, that all packages before described shall be so placed on the roof of such carriage as that no passengers shall sit thereon, under the penalty of 50*s.* for each offence, to be paid by such passengers, and that the division or space on the top of the coach or other carriage aforesaid allotted for luggage shall be distinctly separated from the other part of the top thereof, by some railing or otherwise; and in case any such driver, or owner, or part owner, when required so to

do, shall refuse to permit the said carriage and luggage to be measured by any justice of the peace, magistrate, constable, surveyor of any highway or turnpike road, inspector of coaches duly authorised by the commissioners of stamps, or passenger, he shall forfeit the like penalty. 50 G.3. c.48.

§ 5. "And whereas it is expedient to lower the present height of stage coaches, in which case a greater height of luggage than two feet might be safely permitted to be carried on the outsides thereof;" it is therefore enacted, that it shall be lawful to carry any luggage, parce, or other package in manner herein-before provided for on the roof of any carriage above described of a greater height than two feet: provided such luggage, parcel, or other package be not a greater height from the ground, including the height of such coach, than ten feet nine inches.

Luggage may be carried of a greater height than two feet, if not more than 10 feet 9 inches from the ground.

§ 6. In every licence to be taken out by any person who shall keep any carriage to be employed as a public stage coach or other carriage above described, for the purpose of conveying passengers for hire to and from different places in *G. B.*, shall be specified the number of outside and inside passengers to be carried on or therein as now by law directed; and no such licence shall in future be granted for more than the number of inside and outside passengers in all allowed by law, and such licence shall contain the name or names, and the places of abode of every individual to whom such coach or other carriage shall belong, a copy of which licence shall be accessible at the board or office where it is issued to any person or persons applying either for a copy of or for the perusal of the same.

Number of passengers permitted to be carried, to be specified in the licence;

§ 7. Every person who shall be duly licensed to keep any coach or other carriage above described, for the purpose of conveying passengers for hire to and from different places in *G. B.*, (mail coaches always excepted,) shall paint, or cause to be painted within six months from the passing of this act, on the outside of each door of each such carriage, or on some other conspicuous part thereof, in legible characters of at least one inch in length, and in a different colour from the ground on which the same is painted, and in words at length, the number of outside passengers which the licence shall specify or express (as well as and in like manner as the number of inside passengers as now by law directed) with the name or names of the person or persons, or the company of proprietors, or firm, to whom such coach or other carriage shall belong: provided, that it shall be lawful for any board of commissioners by whom such licence shall be granted to require instead of such inscription that a plate made of brass or other metal shall be fixed on the side of each such carriage, with the name or names of the person or persons, or the company of proprietors, or firm, and a distinct number for each, to the end that the owner or owners and driver of such carriage shall be known; and if any person, company of proprietors, or firm, shall be licensed to keep more than one coach, every one of them shall have several numbers or other marks of distinction, in the same manner as if they did belong to several persons; and if any person shall blot out, obliterate, alter, or deface the number, figure, or mark of distinction appointed by the said commissioners, he shall forfeit 5*l.* for every such offence; and if any person shall employ or make use of any such carriage as aforesaid, for carrying any outside pas-

and to be painted on the doors of the coach.

Commissioners for granting licences may order a brass plate on the side of each coach with the owner's name, &c. instead of the above inscription.

Penalty.

50 G. 3. c. 48. sengers for hire to and from different places in *G. B.*, without being licensed so to do, or without having the said words and number and name or names painted on the outside of each door of such carriage, or in such other conspicuous part thereof, and in such manner as is hereinbefore directed, or shall at any time carry more outside passengers than shall be specified or expressed in the licence, and by the words so painted on the outside of such doors or other conspicuous part of such carriage, or the numbered plate, every person so offending shall for each offence forfeit and pay the sum of 10*l.* for each outside passenger beyond the number allowed, and double that sum if the driver or coachman be also owner or part owner; and every such inscription or plate, as the case may be, to be considered sufficient evidence of the parties to whom such coach or other description of carriage above enumerated doth belong, being owner or proprietor thereof.

Owners of stage coaches shall be liable to penalties in case drivers cannot be found.

§ 8. In case the driver of any such carriage above described, going or travelling for hire, and conveying a greater number of persons in any manner or way in the inside, or on or about the outside of any such carriage, than are allowed by this act, or permitting more than one passenger to sit upon the box (which box shall be so constructed as not conveniently to hold more than one passenger besides the coachman), shall not be known, or being known cannot be found, then and in every such case the owner or owners, proprietor or proprietors, or any of them, of any such carriage above described, shall be liable to all such fines and penalties as if he or they had been the driver only of such carriage, at the time that such offence was committed: provided, that if any such owner or proprietor shall make out to the satisfaction of the justice of the peace or other magistrate by sufficient evidence not resting on his own testimony, that the offence was committed by the driver of the coach or other carriage without his privity or knowledge, and that no profit, advantage, or benefit, either directly or indirectly, has accrued, or could or would have accrued, to such owner or proprietor therefrom, but that such offence was committed against this act by such driver in violation of his duty to the owner or proprietor, as well as against the provisions of this act, such justice of the peace or other magistrate shall discharge the owner or proprietor from such penalty and expence, and levy the same upon the driver only, when found; and such driver, unless he pays the penalty for which he is liable in consequence of such offence, shall be committed to the common gaol or house of correction of the county, or place where such offence shall have been committed, for any time not exceeding six months, nor less than three months.

Owners relieved from penalty in certain cases.

3 G. 4. c. 95.

Informations to be laid against the nearest proprietor.

By stat. 3 *G.* 4. *c.* 95. § 12. After reciting that in cases where such carriages or other vehicles are employed for the conveyance of passengers and goods between places lying distant from each other, it usually happens that the property in such carriages or other vehicles is in several persons, who reside at different points of the line of journey performed by such carriage or other vehicle, and the residences of some of whom is at a great distance from some of the places through which such carriage or other vehicle passes, or at which it arrives, and by reason of such distance such last-mentioned proprietors have not the means of exercising the same superintendence and controul over the man-

agement of such carriage or other vehicle, in distant parts of its journies, as such of the proprietors as have their residence nearer thereto; and that it is expedient, that in all cases of informations and convictions for offences against this act or any former act, such information and conviction should be had and laid against such one or more of the owners or proprietors of such carriages or other vehicles as are resident nearest to the place where the offence shall be committed; it is enacted, "that from and after the passing of this act, all summonses, informations, and convictions, which shall be issued, laid, or prosecuted against any owner or owners, proprietor or proprietors, of any coach, carriage, or other vehicle, under or by virtue of this act, or any former act, for the recovery of any fine or penalty hereby or thereby imposed, shall in all cases in which there shall be more than one such owner or proprietor, and when such owners or proprietors shall reside in different counties (the residence of such owner or proprietor being ascertained by the entry at the stamp office or other place from which the licence to such owner or proprietor was issued) be so issued, laid, or prosecuted against such one or more of the said owners or proprietors as shall reside in the county or place in which, or nearest to which the offence proceeded against shall have been or shall be alleged to have been committed; and that in all such cases as aforesaid, this present act shall and may be allowed and pleaded in bar to the conviction of any such owners or proprietors as aforesaid, other than and except of such owners or proprietors, whose residence shall be in the county or place in which, or nearest to which, the offence so proceeded against shall have been or shall be alleged to have been committed. 3 G.4. c.95.

And by stat. 50 *G*. 3. *c*. 48. § 9. Any summons issued by any justice of the peace or other magistrate, commanding any driver, owner, or proprietor of any carriage above described, or any person or persons, or company of proprietors, or firm of any company, to whom such carriage shall belong, to appear before him at such time or place as to such justice or other magistrate shall seem meet, for any offence committed against this act, or a copy thereof, shall be deemed to be well and sufficiently served, in case either the original or a copy of such summons be left with the known or acting book-keeper for such carriage, in any town or place into or through which any driver offending as aforesaid shall drive such carriage.

50 G. 3. c. 48. Summons left with book-keeper, &c. to be good service.

§ 10. The driver of any such carriage above described, going or travelling for hire, stopping at any place or places where assistance can be procured, shall not quit his horses or the box of such carriage, until a proper person or persons shall be employed to hold the horses or fore-horses whilst such carriage stops, so as to prevent them from running away, and shall have actual hold of such horses, and such person or persons shall hold the same until the driver has returned to his box, or until the post-boy who rides one of the horses is again mounted, and has in his hands the reins for guiding the said horses; and if such driver or such person or persons shall neglect so to do, he or they being duly convicted thereof, by his or their confession, the view of a justice or other magistrate, or by the oath of one or more credible witness or witnesses taken before any justice or other magistrate, shall be subject to a penalty of not less than 10*s*. nor more than 5*l*.

Penalty on drivers leaving their horses or neglecting their duty.

50 G.3. c.48.

for each offence: provided, that nothing in this section or clause contained shall extend to hackney coaches being drawn by two horses only.

Penalty on drivers incapable of driving from intoxication or otherwise, or retarding the mails, or not accounting to their employers, &c.

§ 11. In case the driver of any such carriage, or the person acting as guard, shall by intoxication or by negligence or other misconduct (unavoidable accidents always excepted) endanger the safety of the passengers in their lives, their limbs, or their property, or shall not give due care or protection to any other property with which such driver or guard, or either of them, may be entrusted; or if any driver of any mail coach, or any guard, shall loiter on the road or wilfully mis-spend or lose time so as to retard the arrival of H. M.'s mails at the next stage; or if the driver of any mail coach shall not in all possible cases convey such mails at the speed of such a number of miles an hour as are fixed by the postmaster-general for the conveyance thereof, unless the circumstances of the weather or the badness of the roads, or the occurrence of any accident to the coach or horses, shall prevent the same; or if any driver or guard of any such coach, mail coach, or other carriage, shall not duly account to his or their employers, or persons authorised by them to account with such driver or guard for all monies received by him, them, or either of them, in respect of any passenger or parcel conveyed or taken by such coach or other carriage above described, then and in every such case the driver or guard (as the case may be) so offending, and being convicted thereof by his own confession, the view of a justice (in any case applicable thereto), or the oath or oaths of one or more credible witness or witnesses, before any justice, &c. shall forfeit and pay a sum not less than *5l.* nor more than *10l.* for every such offence, and shall return the sum or sums of money so embezzled; and in case of non-payment, every such justice, &c. is authorised to commit such offender to the common gaol or house of correction for the county or place where such offence shall have been committed, for any time not exceeding six months nor less than three months.

3 G.4. c.95. For punishing coachmen or guards for endangering the lives of persons by intoxication or furious driving, &c.

By stat. 3 *G.* 4. *c.* 95. § 11. After reciting stat. 50 *G.* 3. *c.* 48. § 11. and that it is expedient to extend the powers given by the said recited act; it is enacted, "that if the coachman, guard, or other person having the care of any such coach, mail coach, or other carriage or vehicle as aforesaid, or employed in, upon, or about the same, shall, by intoxication, or wanton and furious driving, or any other wilful misconduct on the public highway, injure or endanger any person or persons whatever in his, her, or their life or lives, limbs, or property, every such coachman or person as aforesaid so offending, shall for every such offence be liable to the same or the like fine or penalty, to be levied, mitigated, and applied in the same or the like manner as in and by the said recited act was mentioned and provided with respect to the offences therein specified; provided that nothing in this act contained shall extend to or be construed to extend to affect hackney coaches or chariots, or their owners or drivers respectively, duly licensed by the commissioners of hackney coaches."

1 G.4. c.4. Persons occasioning accidents by furious

And by stat. 1 *G.* 4. *c.* 4., intituled "*An act for punishing criminally drivers of stage coaches and carriages for accidents occasioned by their wilful misconduct;*" after reciting, that by stat. 50 *G.* 3. *c.* 48. divers regulations and penalties were established

and imposed to carry into effect the useful and highly important purposes thereby intended; and that it is expedient to extend the provisions of the said act, and to punish criminally coachmen, or persons having the care of stage coaches and other public carriages carrying passengers for hire, for accidents occasioned by their wilful misconduct, as after mentioned: enacts, "that if any person whatever shall be maimed or otherwise injured by reason of the wanton and furious driving or racing, or by the wilful misconduct of any coachman or other person having the charge of any stage coach or public carriage, such wanton and furious driving or racing, or wilful misconduct of such coachman or other person, shall be and the same is hereby declared to be a misdemeanor, and punishable as such by fine and imprisonment: provided, that nothing in this act contained shall extend, or be construed to extend, to hackney coaches being drawn by two horses only, and not plying for hire as stage coaches."

1 G.4. c.4.

driving declared guilty of a misdemeanor.

Hackney coaches.

By stat. 50 G. 3. c. 48. § 12. In case the driver or guard of any such coach or other carriage shall use abusive or insulting language to any passenger, or shall insist on and exact more than the sum to which he is legally entitled, then and in every such case the driver or guard (as the case may be) so offending, and being convicted thereof by his own confession, or the oath or oaths of one or more credible witness or witnesses, before any justice, &c. shall forfeit and pay a sum not less than 5*s.* nor more than 10*s.* for every such offence; and in case of non-payment, may be committed to the common gaol or house of correction of the county or place where such offence shall have been committed, for any time not exceeding one month, nor less than three days.

50 G.3. c.48. Penalty on driver insulting passengers, or exacting more than the sum to which he is legally entitled.

§ 13. Any constable or other peace officer refusing or neglecting to execute any warrant granted by any justice of the peace, &c. and being convicted thereof, either by his own confession or upon the oath of one or more credible witness or witnesses, shall for every such offence forfeit and pay the sum of 5*l.*; and in case of non-payment may be committed to the common gaol or house of correction of the county or place where such offence shall be committed, for any time not exceeding one month, unless the said penalty shall be sooner paid.

Penalty on peace officers neglecting to execute warrants.

§ 14. If the driver of any coach or other carriage above described, drawn by two or more horses, and going or travelling for hire, shall permit or suffer more than one person on the coach box besides himself, and a greater number of outside passengers than according to the numbers allowed by this act to be carried or conveyed by any such carriage, it shall be lawful for any outside or inside passenger who shall have been regularly booked, and who has actually paid for his place, if conveyed by such carriage, to require the driver to stop such carriage at any toll or turnpike gate, and to require the collector of the toll at such gate to count the number of passengers, or measure or ascertain the height of the luggage upon such carriage; and if any such driver shall refuse upon the demand of any such passenger to stop any such carriage, or to permit or suffer the collector who shall be so required to count the number of passengers and ascertain the height of the luggage, or to make such examination, then the driver of such coach shall forfeit the sum of

Passenger may require toll collector to count the number of passengers, and measure the height of the luggage.

Penalty for refusal.

50 G.3. c.48. 5*l.* for every such refusal, and shall, if more passengers shall have been carried on such coach, or the luggage shall exceed the height allowed by this act, forfeit for every such offence, the committing whereof shall have been prohibited as aforesaid, double the penalty imposed by this act for such offence, the one-half of such penalty to belong to the toll collector for his trouble, and the other half to the passenger; and if any toll collector, upon being so required by any such passenger, shall neglect or refuse to make such examination, he shall forfeit and pay the sum of 5*l.* for each offence; and if any person or persons shall endeavour to evade such examination, by descending from such carriage previous to its reaching any turnpike gate, and re-ascending after it has passed such turnpike gate, he shall forfeit and pay the sum of 10*l.*

Penalty on coachmen permitting other persons to drive, &c.

§ 15. If the coachman or person having the care of any coach, mail coach, or other carriage above described, shall permit or suffer any other person without the consent of a proprietor, or against the consent of the passengers, to drive the same, or shall quit the box without reasonable occasion, or for a longer space of time than such occasion may require (although the reins for guiding or driving the horses be left for the time in the hands of the passenger on the box), or if the coachman or person having the care of such carriage, shall, by furiously driving, or by any negligence or misconduct, overturn the carriage, or in any manner endanger the persons or property of the passengers, or the property of the owners or proprietors of such carriage (unavoidable accidents always excepted), every such coachman or person as aforesaid so offending shall for every such offence forfeit and pay any sum not exceeding 10*l.* nor less than 5*l.*

Penalties how to be recovered.

§ 16. In all cases where any penalties and forfeitures incurred for any offence committed against this act shall and may be recoverable before one or more justices of the peace, or before any other magistrate above mentioned, every such justice or other magistrate is required to administer an oath, and upon proof of any such offence, shall give judgment or sentence for the forfeiture or penalty incurred, and for the reasonable costs and charges of the prosecution; and if the same shall not be paid, shall commit the person or persons so convicted to the common gaol or house of correction for the said county, shire, borough, town corporate, or place, for any time not exceeding three months nor less than one month, at the discretion of the said justice or other magistrate, unless such person or persons shall enter into such recognisance with such surety before such justices or justice, or other magistrate as herein*before* (*a*) mentioned.

Justices may mitigate penalties.

§ 17. If any such justice or other magistrate shall see cause to mitigate such penalty, he may mitigate or lessen the same to any sum not exceeding one moiety of the penalty or forfeiture incurred, over and above all reasonable costs and charges expended or incurred in the prosecution; and one-half either of the whole or of the moiety of such penalty, with the said costs and charges, shall be paid to the informer for his own behoof, or to be at his disposal for public purposes (except in the special cases above provided for), and the other half shall be paid to the trustees of the

Penalties how to be applied.

(*a*) The word herein*before* is inserted in the act instead of herein*after*.

roads where such offence is committed, who are required, in consideration thereof, to direct their surveyors to watch over the due execution of this act, in the several roads to the superintendence of which they are respectively appointed. 50 G.3. c.48.

Guard firing off his arms, except for defence, shall forfeit *5l.*

§ 18. If any person going or travelling as a guard to any coach, mail coach, or other carriage above described, shall fire off the arms he is entrusted with, either while such carriage is going on the road, or going through or standing in any town, otherwise than for the defence of such carriage, or the passenger or passengers therein, every such person shall for every such offence forfeit and pay the sum of *5l.*

Where no specific penalties are provided for offences, justices may impose them.

§ 19. In case of any person or persons committing any offence against the provisions of this act, for which no specific penalties shall have been provided, he, she, or they shall forfeit and pay at the discretion of one or more justices of the peace, or of any other magistrate above mentioned, any sum not exceeding 10*l.* nor less than 50*s.*, upon being convicted thereof on the oath or oaths of one or more credible witness or witnesses, before such justice or magistrate, acting in and for the county or place where the offence shall have been committed, or by any other justice of the peace residing in any county or place in which the offender shall then actually be present, upon full and satisfactory proof being exhibited on the oath of one or more credible witness or witnesses; and in default of payment of the penalty, he shall for every such offence be committed to the common gaol or house of correction of the county or place where such offence shall have been committed, or of the county or place where he shall actually be present (as the case may be), for any time not exceeding three calendar months nor less than five days.

Penalty on persons conniving at offences.

§ 20. If any person or persons shall receive any sum or sums of money for conniving at any offence prohibited by this act, either for any single offence or for a number of such offences, or by stipulation or agreement by the day, the week, the year, or any other period of time, and shall be duly convicted thereof before one or more justices, or before any other magistrate above mentioned, he, she, or they shall forfeit the sum of 50*l.* for each offence, and in default of the payment thereof shall be committed to any house of correction for any period not exceeding three months nor less than one month.

Carriages of a certain description may carry an additional number of passengers.

§ 21. And whereas it would materially contribute to the safety of passengers, if a great part of the luggage usually conveyed by stage coaches were conveyed in a much lower position than is generally the case at present, and the same restrictions in regard to the number of outside passengers on such stage coaches would not be so requisite, provided no luggage was carried by them, except in the manner hereinafter mentioned; be it therefore further enacted, that all stage coaches, (long-bodied coaches included,) carrying no parcels or luggage whatsoever, excepting in the inside or in the front boot thereof, or in a boot behind or under the body of such carriage; and where the top of such boot behind, when the coach is empty, is not more than six feet from the ground, having obtained a special licence for the purpose, and having the name of the owner or owners, and the number of outside and inside passengers thereby allowed, painted or inscribed thereon, shall be permitted to carry two outside pas-

50 G.3. c.48. sengers more than the number of outside passengers hereby limited with respect to other coaches or carriages above described, without subjecting the drivers, owners, or proprietors of such coaches or other carriages to any of the penalties, forfeitures, fines, or punishments imposed by this act.

Limitation of actions.

§ 22. Prosecutions for offences against this act shall be commenced within 14 days after the offence shall have been committed, and there shall be but one recovery for the same offence, except where the owners of stage coaches or other carriages above described are required to paint their names or sign, and to preserve the same in a clear or legible state, in which case such prosecution may be commenced at any time, and any neglect in remedying the same for the space of one month shall be considered a new offence.

Exemption of hackney-coach stages from the operation of this act.

§ 23. Nothing in this act contained shall extend to, or be construed to extend to affect such hackney coaches, or their owners or drivers respectively, as now are or hereafter may be licensed by the commissioners for licensing and regulating hackney coaches, whether such coaches be so licensed to be used and driven in the ordinary and indiscriminate work of hackney coaches in general, in and about the streets and places within which such hackney coaches are by law compellable to go, or be driven, or are or may be licensed expressly for the purpose of being employed and driven as hackney-coach stages between the metropolis and certain villages and places in the vicinity thereof.

Forms of proceedings set forth in the schedule to be used.

§ 24. The forms of the proceedings relative to the several matters contained in this act, which are set forth and expressed in the schedule annexed, may be used upon all occasions, and with such additions or variations as may be necessary to adapt them to the particular circumstances of the case, or the place where the prosecution for the offence shall take place; and no objection shall be allowed to be made, or advantage taken on account of want of form in any such proceedings; and such conviction, unless appealed from within 14 days in the manner hereinafter mentioned, shall be final and conclusive.

Persons aggrieved may appeal to the quarter sessions.

§ 25. If any person shall find him, her, or themselves aggrieved by any determination, judgment, sentence, or conviction, which any justice or justices of the peace or other magistrate above mentioned shall have given or made in any of the cases hereinbefore mentioned, and shall enter into a recognisance before such justice or justices, or other magistrate, with one sufficient surety, the condition whereof shall be, that such person or persons do and shall appear before the court of the next quarter sessions for the county or other place where such determination, judgment, sentence, or conviction shall have been given or made, then and there to abide the final order, judgment, and sentence of such court on the matters aforesaid(*a*), then and in every such case such person or persons shall be at liberty to appeal to the next general quarter sessions of the peace to be holden for the said county or other place, who upon hearing the said appeal shall have full power finally to determine the same, and to award such costs to the

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(*a*) No notice of appeal, against a conviction, is necessary where the statute requires the informer to enter into a recognisance to appear. *R.* v. *the Just. of Essex*, Vol.1. tit. Appeal, p. 114.

appellant or to the prosecutor or informer, as to such court shall seem fit to be awarded, and such last-mentioned proceedings, final judgment, and sentence, shall not be removable by writ of *certiorari* or otherwise into any other court. 50 G.3. c.48.

The Schedules to which Stat. 50 *G.* 3. *c.* 48. refers.

Forms of Proceedings mentioned in the foregoing Act.

Information.

BE it remembered, that on the ——— *day of* ———, *one thousand eight hundred and* ———, A. B. *of* ———, *in the said county, informeth me* ———, *one of his majesty's justices of the peace for the said county, that* ———, [here describe the offence particularly, and follow the words of the act as near as may be,] *contrary to the statute made in the fiftieth year of the reign of king* George *the third, intituled* " An act for [here insert the title this act] (b)," *which hath imposed a forfeiture of* ——— *for the said offence. Received the* ——— *day of* ———, *by me* ———.

C. D.

Summons for any Person or Persons to attend a Justice of the Peace or other Magistrate.

To A. B. *of* ———.

WHEREAS complaint and information hath been made before me C. D., *one of his majesty's justices of the peace for the said* [*county*, et cetera,] *that*, et cetera [here state the nature and circumstances of the case, as far as it shall be necessary to shew the offence, and to bring it within the authority of the justice, and in doing that follow the words of the act as near as may be]. *These are therefore to require you personally to appear before me, or such other of his majesty's justices of the peace for the said* [*county*, et cetera,] *on the* ——— *day of* ——— *next, at the hour of* ——— *in the* ——— *noon, to answer the said complaint and information, and further to do and receive what to the law shall appertain. Herein fail not. Given under my hand and seal, this* ——— *day of* ———, *one thousand eight hundred and* ——.

Form of Conviction.

BE it remembered, that on the ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———, *at* ———, *in the county of* ——— *aforesaid*, A. B. *came before me*, C. D., *one of his majesty's justices of the peace for the said county*, &c. *and informed me, that*, &c. [here set forth the fact in the manner described by the act,] *whereupon the said* E. F., *after*

(b) " An act to repeal three acts, made in the 28th, 30th, and 46th years of his present majesty, for limiting the number of persons to be carried on the outside of stage coaches or other carriages, and to enact other regulations for carrying the objects of the said acts into effect."

59 G.3. c.48. *being duly summoned to answer said charge, appeared before ———, on the ——— day of ———, at ———, in the said county, and having heard the charge contained in the said information, declared that he was not guilty of the said offence, but the same being fully proved upon the oath of* G. H. *a credible witness, it manifestly appears to me the said justice, that he the said* E. F. *is guilty of the offence charged upon him in the said information; it is therefore considered and adjudged by me the said justice, that he the said* E. F. *be convicted, and I do hereby convict him of the offence aforesaid; and I do hereby declare and adjudge, that he the said* E. F. *hath forfeited the sum of ——— of lawful money of* Great Britain, *for the offence aforesaid, to be distributed as the law directs. according to the form of the statute in that case made and provided. Given under my hand and seal, the ——— day of ———, one thousand eight hundred and ———.*

After the words "*being duly summoned to answer the said charge,*" insert [*did not appear before me pursuant to the said summons*], or, [*did neglect and refuse to make any defence against the said charge, but the same being fully proved,* &c.] as before: after the words, "*contained in the said information*" insert [*acknowledged and voluntarily confessed the same to be true, and it manifestly appears to me the said justice,* &c.] *as above.*

59 G.3. c.96. Felony on stage coaches, &c. indictment how to be laid.

By stat. 59 *G.* 3. *c.* 96. In any indictment for any felony committed on any stage coach, or other such carriage, it shall be sufficient to allege that such felony was committed within any county or city, through any part whereof such carriage shall have passed in the course of the journey. See tit. Indictment, Vol. III. p. 57.

Stamps.

[6 & 7 W. 3. c. 12. — 1 An. st. 2. c. 22. — 8 An. c. 9. — 10 An. c. 19. — 5 G. 3. c. 46. — 12 G. 3. c. 48. — 23 G. 3. c. 58. — 26 G. 3. c. 82. — 31 G. 3. c. 25. — 35 G. 3. c. 55. — 36 G. 3. c. 52. — 42 G. 3. c. 99. — 43 G. 3. c. 126. — 44 G. 3. c. 98. — 52 G. 3. c. 38. — 53 G. 3. c. 108. — 55 G. 3. c. 184. — 1 & 2 G. 4. c. 55. — 3 G. 4. c. 117. — 5 G. 4. c. 41.

THE several provisions relative to the penalties of the stamp acts will be found under the different heads which are subjected to stamp duties.

See titles Almanacks, Vol. I. p. 111.
Cards and Dice, Vol. I. p. 435.
Newspapers and Pamphlets, Vol. III.
Pawning, Vol. III.
Plate, Vol. III.
Stage Coaches, *ante*.

The stamp laws, by length of time, have become somewhat intricate. In one of the acts relating to these duties, viz. 10 *An.* c. 19. there is a clause which brings all the rest within the jurisdiction of the justices of the peace, and almost the whole law relating to this title; and is as follows: 10 An. c. 19. Power of the justices in relation to the stamp duties.

§ 172. Two justices residing near the place where any pecuniary forfeitures *not exceeding* 20*l.* on any act touching any of the duties under the management of the commissioners of the duties on stamped vellum, parchment, and paper, shall be incurred, or any offence against any of the same acts shall be committed in anywise relating to the same duties, by which *any sum of money only* may be forfeited, may hear and determine the same; who shall on information or complaint, within a year after the seizure made or offence committed, summon the party accused, and witnesses; and may issue warrants for levying the penalties by distress and sale, if not redeemed in six days. Jurisdiction of the justices in cases where the penalty does not exceed 20*l.*

§ 173. And the said justices, where they see cause, may mitigate the penalties, the charges being first allowed; and so as they reduce not the penalty to less than double duty, over and above the said charges. Mitigation.

§ 172. Persons aggrieved may appeal to the next sessions. Appeal.

And by stat. 26 *G.* 3. *c.* 82. § 1, 2, 3. Wheresoever any person shall be convicted before one or more justices for any offence against any act concerning the stamp duties, by which any *pecuniary* penalty is forfeited, the justice before whom such person shall be convicted shall levy such penalty and apply the same as by such act is directed; and in default of sufficient direction, the same shall be applied, half to the king, and half to the person who shall prosecute for the same, *if within six months* after the offence is committed; but if *after* six months the whole shall go to the king. 26 G. 3. c. 82. Application of the penalties.

§ 5. And such justice may cause the conviction to be made out in the following form:

BE it remembered, that on the ——— *day of* ———, *in the* ———, A. O. *of* ——— *was duly convicted before me* J. P., *one of his majesty's justices of the peace for the county of* ———, [or, *before us* J. P. *and* E. F., *two of his majesty's justices of the peace for the county of* ———, as the case shall happen to be,] *in pursuance of an act passed in the* ——— *year of the reign of* ———, *for that the said* A. O. *on the* ——— *day of* ——— *now last past, did* [here state the offence against the act, as the case shall happen to be], *contrary to the form of the statute in that case made and provided; and I* [or, *we*, as the case may be,] *do declare and adjudge that he the said* A. O. *hath forfeited, for his said offence, the sum of* ——— *of lawful money of* Great Britain, *which sum of* ——— *I* [or, *we*, as the case may be,] *do hereby mitigate to the sum of* ———, [here state the mitigated penalty, if necessary,] *to be distributed as the law directs. This is the first, second, or other offence* [as the case shall happen to be]. *Given under my hand and seal*, [or, *our hands and seals*, as the case may require,] *this* ——— *day of* ———. Form of conviction.

§ 5. Which conviction shall be filed by the clerk of the peace, and shall not be removable by *certiorari* into any other court. Appeal against the conviction.

26 G.3. c.82. But subject nevertheless to appeal to the quarter sessions in such manner as by any other act is directed.

44 G.3. c.98. No actions for penalties shall be commenced but in the name of the attorney-general in England, and advocate for Scotland, or some officer of the stamp duties.

Stat. 44 *G.* 3. *c.*98. § 10. Enacts, that from the 10th *October*, 1804, it shall not be lawful for any person to commence, prosecute, enter, or file, any action, bill, plaint, or information, in any of H. M.'s courts, or before any justice of the peace, or other magistrate whatsoever, against any person, for the recovery of any fine, penalty, or forfeiture, made or incurred by virtue of this or any other act relating to H. M's stamp duties, unless the same be commenced, prosecuted, entered, or filed in the name of H. M.'s attorney-general, or H. M.'s advocate for *Scotland*, as the case may be, in *England* or *Scotland* respectively, or in the name of the solicitor or some other officer of H. M.'s stamp duties in *England* or *Scotland* respectively.

Recovery and application of penalties.

§ 27. "All fines imposed by this act, except where otherwise expressly directed, shall be sued for, recovered, levied, or mitigated, as any fine by any laws in force on or before the 10th day of *October*, 1804, for securing stamp duties, or by action of debt, bill, plaint, or information, in any of H. M.'s courts of record at *Westminster*, or in the court of exchequer in *Scotland* respectively; and after this act all fines, heretofore imposed by any act relating to the duties on vellum, &c. or this act, shall go to the use of the king: provided, that the commissioners aforesaid may, in every case in which any part of such fine was by any such act given to any informer, give any proportion thereof, as they shall deem expedient, to any person who may inform for or discover any offence, in respect of which any such fine may be discovered, or assist in the recovery thereof."

55 G.3. c.184. By stat. 55 *G.*3. *c.*184. "*For repealing the stamp duties on deeds, law proceedings, and other written or printed instruments, and the duties on fire insurances, and on legacies and successions to personal estate upon intestacies, now payable in* Great Britain; *and for granting other duties in lieu thereof*," § 1. the duties granted by 48 *G.*3. *c.*149. 44 *G.*3. *c.*98. schedule (A), 50 *G.*3. *c.*35. § 2. and 44 *G.*3. *c.*98. schedule (B), are made to cease, except as to arrears, &c.

§ 2. From *September* 28th, 1815, duties specified in schedule annexed to be levied.

The stamp must be of the proper kind.

§ 4. "No stamp appropriated to denote the duty charged on any particular instrument, and bearing the name of such instrument on the face thereof, shall be used for denoting any other duty of the same amount, or, if so used, the same shall be of no avail."

Instruments having wrong stamps, but of sufficient value to be valid.

Exception.

§ 10. "All instruments upon which any stamp or stamps shall have been used, of any improper denomination or rate of duty, but of equal or greater value in the whole with or than the stamp or stamps which ought regularly to have been used thereon, shall nevertheless be deemed valid and effectual in the law; except in cases where the stamp or stamps used on such instrument shall have been specially appropriated to any other instrument, by having its name on the face thereof."

Forgery of stamps, &c. felony.

§ 7. Enacts, "that if any person shall forge or counterfeit, or cause or procure to be forged or counterfeited, any stamp or die, or any part of any stamp or die, which shall have been provided,

made, or used, in pursuance of this act, or in pursuance of any former act or acts relating to any stamp duty or duties, or shall forge, counterfeit, or resemble, or cause or procure to be forged, counterfeited, or resembled, the impression or any part of the impression of any such stamp or die as aforesaid, upon any vellum, parchment, or paper, or shall stamp or mark, or cause or procure to be stamped or marked, any vellum, parchment, or paper, with any such forged or counterfeited stamp or die, or part of any stamp or die as aforesaid, with intent to defraud H. M., his heirs, or successors, of any of the duties hereby granted, or any part thereof; or if any person shall utter or sell or expose to sale any vellum, parchment, or paper, having thereupon the impression of any such forged or counterfeited stamp or die, or part of any stamp or die, or any such forged, counterfeited, or resembled impression or part of impression as aforesaid, knowing the same respectively to be forged, counterfeited, or resembled; or if any person shall privately and secretly use any stamp or die which shall have been so provided, made, or used as aforesaid, with intent to defraud H. M., his heirs or successors, of any of the said duties or any part thereof; or if any person shall fraudulently cut, tear, or get off, or cause or procure to be cut, torn, or got off, the impression of any stamp or die which shall have been provided, made, or used in pursuance of this or any former act, for expressing or denoting any duty or duties under the care and management of the commissioners of stamps, or any part of such duty or duties, from any vellum, parchment, or paper whatsoever, with intent to use the same for or upon any other vellum, parchment, or paper, or any instrument or writing charged or chargeable with any of the duties hereby granted; then and in every such case every person so offending, and every person knowingly and wilfully aiding, abetting or assisting any person or persons in committing any such offence as aforesaid, and being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death as a felon without benefit of clergy."

55 G. 3. c. 184.

See also stat. 52 G. 3. c. 143. § 7. and 2 Russ. 1556.

Powers of former acts extended.

§ 8. All the powers, &c. pains and penalties contained in and imposed by the several acts relating to the duties by this act repealed, and the several acts relating to any prior duties of the same kind or description, shall be of full force and effect with respect to the duties by this act granted, as far as the same shall be applicable, &c.

Provisions of former acts respecting agreements to be applied only to those charged with 1*l.*

§ 9. The provisions and regulations of former acts relating to agreements shall be applied only to such agreements as are hereby charged with a duty of 1*l.*; and the agreements hereby charged with a duty of 1*l.* 15*s.* shall be subject and liable to the same provisions and regulations as deeds hereby charged with a like duty.

Penalty for making, accepting, or paying bills of exchange, &c. not duly stamped, 50*l.*

§ 11. "If any person or persons shall make, sign, or issue, or cause to be made, signed, or issued, or shall accept or pay, or cause or permit to be accepted or paid, any bill of exchange, draft, or order, or promissory note for the payment of money, liable to any of the duties imposed by this act, without the same being duly stamped for denoting the duty hereby charged thereon, he, she, or they shall, for every such bill, draft, order, or note, forfeit the sum of 50*l.*"

55 G.3. c.184. Penalty for post-dating bills of exchange, &c. 100*l.*

§ 12. "If any person or persons shall make and issue, or cause to be made and issued, any bill of exchange, draft, or order, or promissory note for the payment of money, at any time after date or sight, which shall bear date subsequent to the day on which it shall be issued, so that it shall not in fact become payable in two months, if made payable after date, or in sixty days, if made payable after sight, next after the day on which it shall be issued, unless the same shall be stamped for denoting the duty hereby imposed on a bill of exchange and promissory note for the payment of money at any time exceeding two months after date, or sixty days after sight, he, she, or they shall, for every such bill, draught, order, or note, forfeit the sum of 100*l.*"

Penalty for issuing unstamped drafts on bankers, without specifying the place where issued, or if post-dated, 100*l.*

§ 13. "For the more effectually preventing of frauds and evasions of the duties hereby granted on bills of exchange, drafts, or orders for the payment of money, under colour of the exemption in favour of drafts or orders upon bankers or persons acting as bankers, contained in the schedule hereunto annexed," enacts, "that if any person or persons shall, after the 31st of *August*, 1815, make and issue, or cause to be made and issued, any bill, draft, or order, for the payment of money to the bearer on demand, upon any banker or bankers, or any person or persons acting as a banker or bankers, which shall be dated on any day subsequent to the day on which it shall be issued, or which shall not truly specify and express the place where it shall be issued, or which shall not in every respect fall within the said exemption, unless the same shall be duly stamped as a bill of exchange according to this act, the person or persons so offending shall for every such bill, draft, or order, forfeit the sum of 100*l.*; and if any person or persons shall knowingly receive or take any such bill, draft, or order, in payment of or as a security for the sum therein mentioned, he, she, or they shall for every such bill, draft, or order, forfeit the sum of 20*l.*; and if any banker or bankers, or any person or persons acting as a banker, upon whom any such bill, draft, or order, shall be drawn, shall pay, or cause or permit to be paid, the sum of money therein expressed, or any part thereof, knowing the same to be post-dated, or knowing that the place where it was issued is not truly specified and set forth therein, or knowing that the same does not in any other respect fall within the said exemption, then the banker or bankers, or person or persons so offending, shall for every such bill, draft, or order, forfeit the sum of 100l., and moreover, shall not be allowed the money so paid or any part thereof, in account against the person or persons, by or for whom such bill, draft, or order, shall be drawn, or his, her, or their executors, or administrators, or his, her, or their assignees or creditors in case of bankruptcy or insolvency, or any other person or persons claiming under him, her, or them."

Penalty for receiving such drafts, 20*l.*; and on bankers for paying them, 100*l.* &c.

6 & 7 W.3. c.12. Writings exempted from stamps.

By stat. 6 & 7 *W.* 3. *c.* 12. § 2. Any warrant made by or recognisance taken before any justice or justices of the peace are declared to be exempted from stamp duties. See also stat. 44 *G.* 3. *c.* 98. Sch. (A).

By stat. 44 *G.* 3. *c.* 98. § 19. Nothing in that act shall extend to charge with any duty any proceedings with respect to persons admitted to sue or defend in *formâ pauperis*. See also stat. 5 *W.* 3. *c.* 21. § 14.

Nor any proceedings of any court martial, relative to the trial of any common soldier; or any orders, decrees, or proceedings, before any commissioners of sewers, or in the court of stannaries; nor any instruments, matters, or things relating to the purchase or redemption of any land tax. See also stat. 42 *G.* 3. *c.* 116. § 81. 44 G. 3. c. 98.

By stat. 44 *G.* 3. *c.* 98. Commissions granted to any officers of volunteer or yeomanry cavalry or volunteer infantry are exempted from stamp duties.

And by stat. 52 *G.* 3. c. 38. § 199. No commission granted to any officer of the local militia shall be subject to any stamp duty. 52 G. 3. c. 38.

For the management of the stamp duties the king mny appoint commissioners, who shall substituts inferior officers. See 5 & 6 *W.* 3. *c.* 21. § 7. 9 & 10 *W.* *c.* 25. § 48. 44 *G.* 3. *c.* 98. § 6. Officers for the stamp duties.

With respect to duties imposed by the several acts before the 8 *An.* *c.* 9. the officers, before they shall act, shall take an oath for the due execution of their office before one or more of the commissioners; and by the said act of 8 *An.* *c.* 9. § 42. and subsequent acts, they may take the said oath, with respect to the duties imposed by those acts, before one or more of the commissioners, or a justice of the peace. 8 An. c. 9.

By stat. 5 & 6 *W.* 3. *c.* 21. § 11. If any person shall write on any paper or parchment any of the matters or things for which such paper or parchment is by the act charged to pay duty, before it be duly stamped, he shall forfeit 500*l.* (reduced to 5*l.* by 6 & 7 *W.* 3. *c.* 12. § 7. and by the 9 & 10 W. 3. *c.* 25. § 59. 5*l.* more,) and an officer offending shall over and above forfeit his office. 5 & 6 W. 3. c. 21. &c. Penalty for writing before stamped.

And by stat. 5 & 6 *W.* 3. *c.* 21. § 11. If any instrument shall be written by any person (not being a known clerk or officer in respect of his office entitled to write the same) on paper or parchment not duly stamped, there shall be paid over and above the duty the sum of 5*l.* (and by the 9 & 10 *W.* 3. *c.* 25. § 59. 5*l.* more;) and the instrument shall not be given in evidence in any court until both the duty and the said sum shall be paid, and a receipt produced for the same under the hand of some officer appointed to receive the duties, and until the same shall be stamped.

Stat. 23 *G.* 3. *c.* 58. §. 5. Provides, that no memorandum or agreement not stamped shall be deemed void, if stamped at the head office, or the duty paid and a receipt given thereon for the same by the proper officer receiving such duty within 21 days after such agreement shall have been entered into. 23 G. 3. c. 58. Memorandums or agreements may be stamped within 21 days.

By stat. 1 *An.* *st.* 2. *c.* 22. § 5. All matters and things shall be written either upon, or as near as conveniently may be to the stamp; on pain of 10*l.* with full costs. 1 An. st. 2. c. 22. Writing to be near the stamp.

§ 2, 3. If any person shall write any thing in respect whereof the stamp duties are payable, on any piece of paper or parchment, whereon there shall have been before any writing in respect whereof any duty was payable, before the same hath been again stamped; or shall erase or scrape out any name, sum, date, or other thing, or fraudulently take off any stamp, with intent to use it in any other thing in respect whereof any duty is payable; he shall forfeit in like manner as for writing on paper unstamped, and also 20*l.* with full costs. See also stat. 6 *G.* 1. *c.* 21. § 56. The same stamp not to serve twice.

And by stat. 12 *G.* 3. *c.* 48. Every such person so offending shall be guilty of felony, and transported for a term not exceeding 12 G. 3. c. 48.

12 G.3. c.48. seven years; and if he return before the expiration of his term, he shall be guilty of felony, without benefit of clergy, and may be tried in the county where he was apprehended. And if an offender, being out of prison, shall discover any other offender so as he be convicted, such discoverer shall have a pardon.

5 G. 3. c. 46. Stamps spoiled. By stat. 5 *G.*3. *c.* 46. § 39. Stamps spoiled before the writing thereon hath been executed, may, upon oath made thereof before the commissioners, be exchanged at the stamp office.

And by stat. 44 *G.* 3. *c.* 98. § 17. The commissioners of stamps may make such regulations for preventing fraudulent claims, and for regulating the times and places for cancelling or allowing other stamps, as they shall think proper.

53 G. 3. c. 108. By stat. 53 *G.* 3. *c.* 108. § 11. Powers of the commissioners of stamps, to allow and exchange spoiled stamps, are extended to a variety of cases of instruments signed by the parties.

By § 14. Provision is made for the allowance of spoiled stamps on bills of exchange and promissory notes.

§ 15. Relates to the allowance of stamps, as spoiled, on certain articles of clerkship to attornies.

Application for the allowance of spoiled stamps, to be made withi limited time. § 16. And where the commissioners are already authorised to allow as spoiled and to exchange any stamps used for instruments not fully written or not signed by any party, they shall not make the allowance, unless the stamps shall be brought for that purpose to them at their head office within six calendar months after the same shall have been spoiled, if the same shall belong to persons resident in *London* or *Westminster*, or within ten miles thereof respectively, or within 12 calendar months after the same shall have been spoiled, if belonging to persons resident elsewhere.

Duties and penalties may be recovered with costs. By § 23. For better securing the duties in general under the management of the commissioners of stamps, it is enacted, that in all actions and proceedings, in the name of H. M., or in the name of any person for and on the behalf of H. M. for the recovery of any duties, debts or penalties granted or imposed, due or payable by or under any act or acts now in force relating to the duties under the management of the commissioners of stamps, or by or under this act, H. M. may have and recover such duties, debts, and penalties, with full costs of suit, and all charges attending the same.

Commissioners of stamps may stay proceedings in prosecutions for penalties, on payment of part thereof. § 24. The commissioners of stamps may stay the proceedings in any prosecution commenced by their direction for the recovery of any penalties incurred by any person under any act relating to any of the duties under their management, on payment of part only of such penalty, with or without costs, or on payment only of the costs incurred in such prosecution, or any part thereof, as they shall judge expedient; and the said commissioners, at their discretion, may also give all or any part of the sums paid by way of penalty in such prosecutions as aforesaid, to the persons informing them of the offences in respect of which the same shall be paid.

Offences may be tried in the county, &c. where committed, or where § 25. All criminal offences committed against or in breach of any act or acts now in force, for granting or securing any of the duties under the management of the commissioners of stamps, shall and may be inquired of, tried, and determined, either in the county or city, or town and county, where the offence shall be

committed, or where the party or parties accused, or any of them, shall be apprehended. — 55 G. 3. c. 184. — offender shall be apprehended.

By stat. 55 *G.* 3. *c.* 184. § 52. All affidavits and solemn affirmations in the case of quakers, required by this or any former or future act of parliament, or which shall be required by the said commissioners of stamps, to be made for the satisfaction of the said commissioners, of and concerning any facts or circumstances upon which they are to execute the powers vested in them by this or any other act, or for the verification of any accounts of or concerning the duties under their management, or for any other purpose relating to such duties, shall, in all cases not otherwise expressly provided for, be made before the said commissioners or any one or more of them, or before a master in chancery, ordinary or extraordinary, in *England*, or before any person duly commissioned to take affidavits by the court of session or the court of exchequer in *Scotland*, or before one of H. M.'s justices of the peace in *Scotland*. — Affidavits relating to stamp duties, if no express provision, to be made before commissioners, &c.

§ 53. Persons knowingly and wilfully making false oaths or affirmations, and being thereof lawfully convicted, are to be liable to such pains and penalties as persons convicted of wilful and corrupt perjury are liable to. — Penalty for perjury.

§ 54. No stamp duty to be charged upon ginger and peppermint lozenges, or any other article of confectionary, unless vended as medicines, or for the cure or relief of any disorder affecting the human body, and no licence to be taken out for vending the same. — Exempting ginger and peppermint lozenges, and other confectionary, from stamps, unless avowedly sold as medicines.

§ I. Duty on Legacies and Distributive Shares of Intestate Estates.

§ II. Duty on Receipts for Money.

§ I. Duties on Probates of Wills and Letters of Administration, and on Legacies and Distributive Shares of Intestate Estates.

Probate of a Will, and Letters of Administration with a Will annexed, to be granted in England;

Where the estate and effects for or in respect of which such probate, and letters of administration, respectively, shall be granted, *exclusive of what the deceased shall have been possessed of or entitled to as a trustee for any other Person or Persons, and not beneficially*, shall be

	£.	s.	d.
Above the value of 20*l.* and under the value of 100*l.*	0	10	0
100	2	0	0
200	5	0	0
300	8	0	0
450	11	0	0
600	15	0	0

55 G.3. c.184.

	£.	s.	d.
Above the value of 800*l*. and under the value of 1000*l*.	22	0	0
1000	30	0	0
1500	40	0	0
2000	50	0	0
3000	60	0	0
4000	80	0	0
5000	100	0	0
6000	120	0	0
7000	140	0	0
8000	160	0	0
9000	180	0	0
10,000	200	0	0
12,000	220	0	0
14,000	250	0	0
16,000	280	0	0
18,000	310	0	0
20,000	350	0	0
25,000	400	0	0
30,000	450	0	0
35,000	525	0	0
40,000	600	0	0
45,000	675	0	0
50,000	750	0	0
60,000	900	0	0
70,000	1050	0	0
80,000	1200	0	0
90,000	1350	0	0
100,000	1500	0	0
120,000	1800	0	0
140,000	2100	0	0
160,000	2400	0	0
180,000	2700	0	0
200,000	3000	0	0
250,000	3750	0	0
300,000	4500	0	0
350,000	5250	0	0
400,000	6000	0	0
500,000	7500	0	0
600,000	9000	0	0
700,000	10,500	0	0
800,000	12,000	0	0
900,000	13,500	0	0
1,000,000 and upwards	15,000	0	0

Letters of Administration, without a Will annexed, to be granted in England;

Where the estate and effects for or in respect of which such letters of administration shall be granted, *exclusive of what the deceased shall have been possessed of or entitled to as a trustee for*

any other person or persons, and not beneficially, shall be 55 G.3. c.184.

	£.	s.	d.
Above the value of 20*l.* and under the value of 50*l.*	0	10	0
50	1	0	0
100	3	0	0
200	8	0	0
300	11	0	0
450	15	0	0
600	22	0	0
800	30	0	0
1000	45	0	0
1500	60	0	0
2000	75	0	0
3000	90	0	0
4000	120	0	0
5000	150	0	0
6000	180	0	0
7000	210	0	0
8000	240	0	0
9000	270	0	0
10,000	300	0	0
12,000	330	0	0
14,000	375	0	0
16,000	420	0	0
18,000	465	0	0
20,000	525	0	0
25,000	600	0	0
30,000	675	0	0
35,000	785	0	0
40,000	900	0	0
45,000	1010	0	0
50,000	1125	0	0
60,000	1350	0	0
70,000	1575	0	0
80,000	1800	0	0
90,000	2025	0	0
100,000	2250	0	0
120,000	2700	0	0
140,000	3150	0	0
160,000	3600	0	0
180,000	4050	0	0
200,000	4500	0	0
250,000	5625	0	0
300,000	6750	0	0
350,000	7875	0	0
400,000	9000	0	0
500,000	11,250	0	0
600,000	13,500	0	0
700,000	15,750	0	0
800,000	18,000	0	0
900,000	20,250	0	0
1,000,000 and upwards	22,500	0	0

Exemptions from all stamp duties, probate of will, and letters of administration of any common seaman, marine, or soldier Exemptions.

who shall be slain, or die, in the service of H. M., his heirs or successors.

55 G.3. c.184. By stat. 55 *G.* 3. *c.* 184. The former duties under the care of the commissioners for stamp duties were repealed, and new duties were imposed upon legacies.

[These duties are here inserted by reason of their general importance.]

Schedule, Part III.

Legacies and successions to personal or moveable estate upon intestacy.

I. *Where the Testator, Testatrix or Intestate died before or upon the* 5th *Day of* April, 1805.

For every legacy, specific or pecuniary, or of any other description, of the amount or value of 20*l.* or upwards, given by any will or testamentary instrument of any person who died before or upon the 5th day of *April,* 1805, out of his or her personal or moveable estate, and which shall be paid, delivered, retained, satisfied or discharged, after the 31st day of *August,* 1815.

Also for the clear residue (when devolving to one person) and for every share of the clear residue (when devolving to two or more persons) of the personal or moveable estate of any person who died before or upon the 5th day of *April,* 1805 (after deducting debts, funeral expences, legacies and other charges first payable thereout), whether the title to such residue, or any share thereof, shall accrue by virtue of any testamentary disposition, or upon a partial or total intestacy; where such residue, or share of residue, shall be of the amount or value of 20*l.* or upwards, and where the same shall be paid, delivered, retained, satisfied or discharged, after the 31st day of *August,* 1815.

	£. s. d.
Where any such legacy, or residue, or share of such residue, shall have been given, or have devolved, to or for the benefit of *a brother or sister of the deceased, or any descendant of a brother or sister of the deceased;* a duty at and after the rate of 2*l.* 10*s. per centum,* on the amount or value thereof - -	*per cent.* 2 10 0
If to or for the benefit of *a brother or sister of the father or mother of the deceased, or any descendant of a brother or sister of the father or mother of the deceased;* a duty of - - - - -	*per cent.* 4 0 0
If to or for the benefit of *a brother or sister of a grandfather or grandmother of the deceased, or any descendant of a brother or sister of a grandfather or grandmother of the deceased;* a duty of - -	*per cent.* 5 0 0
And if to or for the benefit of any person, *in any other degree of collateral consanguinity to the deceased* than is above described, or to or for the benefit of *any stranger in blood to the deceased;* a duty of -	*per cent.* 8 0 0

II. *Where the Testator, Testatrix or Intestate, shall have died after the 5th Day of* April, 1805. 55 G.3. c.184.

For every legacy, specific or pecuniary, or of any other description, of the amount or value of 20*l.* or upwards, given by any will or testamentary instrument, of any person, who shall have died after the 5th day of *April*, 1805, either out of his or her personal or moveable estate, or out of or charged upon his or her real or heritable estate, or out of any monies to arise by the sale, mortgage or other disposition of his or her real or heritable estate, or any part thereof, and which shall be paid, delivered, retained, satisfied or discharged after the 31st day o *August*, 1815:

Also, for the clear residue (when devolving to one person) and for every share of the clear residue (when devolving to two or more persons) of the personal or moveable estate, of any person, who shall have died after the 5th day of *April*, 1805, (after deducting debts, funeral expences, legacies and other charges first payable thereout,) whether the title to such residue, or any share thereof, shall accrue by virtue of any testamentary disposition, or upon a partial or total intestacy; where such residue, or share of residue, shall be of the amount or value of 20*l.* or upwards, and where the same shall be paid, delivered, retained, satisfied or discharged after the 31st day of *August*, 1815:

And also for the clear residue (when given to one person) and for every share of the clear residue (when given to two or more persons) of the monies to arise from the sale, mortgage or other disposition, of any real or heritable estate, directed to be sold, mortgaged or otherwise disposed of, by any will or testamentary instrument, of any person, who shall have died after the 5th day of *April*, 1805, (after deducting debts, funeral expences, legacies and other charges first made payable thereout, if any) where such residue, or share of residue, shall amount to 20*l.* or upwards, and where the same shall be paid, retained or discharged after the 31st day of *August*, 1815:

	£.	s.	d.
Where any such legacy or residue, or any share of such residue, shall have been given, or have devolved, to or for the benefit of *a child of the deceased, or any descendant of a child of the deceased,* or to or for the benefit of *the father or mother, or any lineal ancestor of the deceased;* a duty at and after the rate of 1*l.* *per centum* on the amount or value thereof - - - - - -	*per cent.* 1	0	0
If to or for the benefit of *a brother or sister of the deceased, or any descendant of a brother or sister of the deceased;* a duty of - - - - -	*per cent.* 3	0	0
If to or for the benefit of *a brother or sister of the father or mother of the deceased, or any descendant of a brother or sister of the father or mother of the deceased;* a duty of - - - - -	*per cent.* 5	0	0
If to or for the benefit of *a brother or sister of a grandfather or grandmother of the deceased, or any descendant of a brother or sister of a grandfather or grandmother of the deceased;* a duty of - -	*per cent.* 6	0	0

55 G. 3. c. 184. And if to or for the benefit of any person, *in any other degree of collateral consanguinity to the deceased* than is above described, or to or for the benefit of *any stranger in blood to the deceased*; a duty of - £. s. d. *per cent.* 10 0 0

And all gifts of annuities, or by way of annuity, or of any other partial benefit or interest, out of any such estate or effects as aforesaid, shall be deemed legacies within the intent and meaning of this schedule.

And where any legatee shall take two or more distinct legacies or benefits under any will or testamentary instrument, which shall together be of the amount or value of 20*l.* each shall be charged with duty, though each or either may be separately under that amount or value.

Exemptions.

Legacies, and residues, or shares of residue, of any such estate or effects as aforesaid, given or devolving to or for the benefit of the husband or wife of the deceased, or to or for the benefit of any of the royal family.

And all legacies which were exempted from duty by the act passed in the 39th year of *G.* 3. *c.* 73. for exempting certain specific legacies given to bodies corporate, or other public bodies, from the payment of duty.

36 G. 3. c. 52. Commissioners of the land tax to ascertain the duty on property not reduced into money when disputes arise.

By stat. 36 *G.* 3. *c.* 52. § 22. In case of specific legacies, where the residue of any personal estate shall consist of property not reduced into money, the person taking administration, or by whom the duty ought to be paid, may set a value thereon, and offer the duty accordingly; and may, at his own expence, require the stamp commissioners to appoint a person to set such value, and such commissioners may accept the duty set by such person with an appraisement, but if they shall not be satisfied with the value so set, they may appoint a person to appraise such effects, and to set the value thereon, and require the duty to be paid accordingly; but if the person who ought to pay such duty shall not be satisfied with such valuation, he may cause the same to be reviewed by the commissioners of the land tax of the district where such effects shall be, at their next meeting, if 14 days have elapsed before such meeting, and if not at the next succeeding meeting, of which appeal six days' notice shall be given to the stamp commissioners; and the said commissioners of the land tax may appoint a person to appraise such effects, and to set a value thereon, and may hear and determine such appeal in like manner as appeals to them in other cases, and their judgment shall be final; and if the valuation made under the authority of such stamp commissioners shall not be appealed from within the time aforesaid, or shall be affirmed upon appeal, the duty shall be paid accordingly; and if any variation shall be made on such appeal, the duty shall be paid according to such variation; and if the duty assessed in manner aforesaid shall exceed the duty offered to and refused by such stamp officers, the expences shall be borne by the person liable to pay such duty. If any dispute shall arise between persons entitled to any such legacy, or residue, or taking administration as aforesaid, respecting the value thereof, or duty to be paid thereon, the duty shall be assessed by such stamp commissioners on reference to them by either party; and if the value of such pro-

perty shall be in dispute, such stamp commissioners shall cause an appraisement to be made thereof, at the expence of the person liable to pay the duty, in manner aforesaid; and if such person shall be dissatisfied with such valuation, the same shall be reviewed and finally determined by the said commissioners of the land tax, upon appeal to them within the time and in the manner aforesaid. And if the effects whereon such duty is payable shall be ten miles from *London*, such persons as shall be deputed by the said stamp commissioners shall act in their stead. 36 G. 3. c. 52.

§ 30. And if it shall appear to the said stamp commissioners, upon oath, to be administered by a justice, or master extraordinary in chancery, that less duty has been paid than ought to have been, by mistake, without intention of fraud, such mistake may be rectified, by such commissioners, who may accept the duty really due within three calendar months, if no suit hath been instituted, and on payment of 10*l.* *per cent.* thereon by way of penalty. Mistakes in paying duty to be rectified.

§ 31. Every person paying or receiving money contrary to this act, who shall within 12 calendar months discover the other party offending, so as he be convicted thereof, shall be indemnified and discharged from all penalties against this act. One offender discovering another indemnified.

§ 42. And all powers of former acts relating to the stamp duties, not hereby altered, shall be in force, in the execution of this act. Powers of former acts to extend to this act.

By stat. 42 *G.* 3. *c.* 99. § 2. Wherever any executor or administrator shall not have paid the said duties within the time, the court of exchequer may, on application from the stamp office on satisfactory affidavit, grant a rule for such executor to shew cause why he should not deliver to the commissioners an account on oath of all legacies or of the personal property paid or payable by him, and why the duties thereon have not been or should not be forthwith paid, and may make such rule absolute where it appears proper. 42 G. 3. c. 99. Executors, &c. not having paid the duty in proper time.

And registrars of ecclesiastical courts shall within a month of requisition deliver to the stamp office an account of wills and letters of administration in their custody with particulars relating thereto, and extracts from any wills deemed necessary by the commissioners, on payment of fees agreed on or allowed by the ecclesiastical court, on pain of 50*l.*, recoverable by information by the attorney general. Registrars to deliver accounts of wills, &c. to the stamp office.

By stat. 55 *G.* 3. *c.* 184. § 37. It is enacted, that after the 31st *August*, 1815, "if any person shall take possession of, and in any manner administer, any part of the personal estate and effects of any person deceased without obtaining probate of the will or letters of administration of the estate and effects of the deceased, *within six calendar months* after his or her decease, or within two calendar months after the termination of any suit or dispute respecting the will or the right to letters of administration, if there shall be any such, which shall not be ended within four calendar months after the death of the deceased; every person so offending shall forfeit the sum of 100*l.* and also a further sum, at and after the rate of 10*l.* *per centum* on the amount of the stamp duty, payable on the probate of the will or letters of administration of the estate and effects of the deceased." 55 G. 3. c. 184. Penalty for not proving wills, or taking letters of administration, within a given time, 100*l.* and 10 per cent. on the duty.

55 G. 3. c. 184. Wills, &c. of soldiers or sailors exempted.

And by stat. 55 *G.* 3. *c.* 184., schedule, part 3. The probate of the will, letters of administration, and inventory of the effects of any common seaman, marine or soldier, who shall be slain or die in the service, shall be exempted from the stamp duties imposed by this act.

§ II. Duty on Receipts for Money.

55 G. 3. c. 184. Duty.

By stat. 55 *G.* 3. *c.* 184. The duties imposed by former acts are repealed, and the following granted in lieu thereof:

Schedule, Part I.

Receipt or discharge, given for or upon the payment of money,

Amounting to	and not amounting to	Duty. *l.*	*s.*	*d.*
2*l.*	5*l.*	0	0	2
5*l.*	10*l.*	0	0	3
10*l.*	20*l.*	0	0	6
20*l.*	50*l.*	0	1	0
50*l.*	100*l.*	0	1	6
100*l.*	200*l.*	0	2	6
200*l.*	300*l.*	0	4	0
300*l.*	500*l.*	0	5	0
500*l.*	1000*l.*	0	7	6
1000*l.* or upwards		0	10	0
And where any sum of money whatever shall be therein expressed or acknowledged to be received *in full of all demands*		0	10	0

And any note, memorandum or writing whatsoever, given to any person for or upon the payment of money, whereby any sum of money, debt or demand, or any part of any debt or demand *therein specified,* and amounting to two pounds or upwards, shall be expressed or acknowledged to have been *paid, settled balanced, or otherwise discharged or satisfied,* or which shall import or signify any such acknowledgment, and whether the same shall or shall not be signed with the name of any person, shall be deemed and taken to be *a receipt for a sum of money,* of equal amount with the sum, debt or demand so expressed or acknowledged to have been paid, settled, balanced or otherwise discharged or satisfied within the intent and meaning of this schedule, and shall be charged with a duty accordingly.

And any receipt or discharge, note, memorandum or writing whatever, given to any person for or upon the payment of money, which shall contain, import or signify any *general* acknowledgment of any debt, account, claim or demand, debts, accounts, claims or demands, *whereof the amount shall not be therein specified,* having been paid, settled, balanced, or otherwise discharged or satisfied, or whereby any sum of money therein mentioned shall be acknowledged to be received *in full,* or in discharge or

N. B. — The rules, &c. not connected with the office of a justice or commissioner of the land tax, further than as above set forth, are omitted.

satisfaction of any such debt, account, claim or demand, debts, accounts, claims or demands, and whether the same shall or shall not be signed with the name of any person, shall be deemed and taken to be *a receipt for the sum of* 1000*l. or upwards*, within the intent and meaning of this schedule, and shall be charged with the duty of ten shillings accordingly. 55 G.3. c.184.

And all receipts, discharges and acknowledgments of the description aforesaid, which shall be given for or upon payments made by or with any bills of exchange, drafts, promissory notes or other securities for money, shall be deemed and taken to be receipts given upon the payment of money, within the intent and meaning of this schedule.

Exemptions from the preceding Duties on Receipts.

Receipts exempted from stamp duty by any act or acts relating to the assessed taxes.

Receipts or discharges given by the treasurer of the navy, for any money impresteded to or received by him, for the service of the navy.

Receipts or discharges given by any agent, for money imprested to him, on account of the pay of the army or ordnance.

Receipts or discharges given by any officer, seaman, marine or soldier, or their representatives respectively, for or on account of any wages, pay or pension, due from the navy office, army pay office or ordnance office.

Receipts or discharges given for the consideration money, for the purchase of any share in any of the government or parliamentary stocks or funds, or in the stocks and funds of the governor and company of the bank of *England*, or of the *East India* company, or *South Sea* company, and for any dividend paid on any share of the said stocks or funds respectively.

Receipts or discharges given for any principal money or interest due on exchequer bills.

Receipts given for money deposited in the bank of *England*, or in the bank of *Scotland*, or royal bank of *Scotland*, or in the bank of the *British* linen company in *Scotland*, or in the hands of any banker or bankers, to be accounted for on demand; provided the same be not expressed to be received of or by the hands of any other than the person or persons to whom the same is to be accounted for. But if with interest — see Promissory Note.

Receipts or discharges written upon promissory notes, bills of exchange, drafts or orders for the payment of money, duly stamped according to the laws in force at the date thereof; or upon bills of exchange drawn out of but payable in *Great Britain*.

Receipts or discharges given upon bills or notes of the governor and company of the bank of *England*.

Letters by the general post acknowledging the safe arrival of any bills of exchange, promissory notes, or other securities for money. Letters.

Receipts or discharges indorsed or otherwise written upon or contained in any bond, mortgage, or other security, or any

55 G.3. c.184. conveyance, deed or instrument whatever, duly stamped according to the laws in force at the date thereof, acknowledging the receipt of the consideration money therein expressed, or the receipt of any principal money, interest or annuity thereby secured.

Releases or discharges for money, by deeds duly stamped according to the laws in force at the date thereof.

Receipts or discharges given for drawbacks or bounties upon the exportation of any goods or merchandize from *Great Britain.*

Receipts or discharges for the return of any duties of customs upon certificates of over entry.

Receipts or acknowledgments of payment indorsed upon any bills, orders, remittance bills or remittance certificates, drawn by commissioned officers, masters and surgeons in the navy, or by any commissioner or commissioners of the navy, under the authority of the act passed in the 35th of *G.* 3. for the more expeditious payment of the wages and pay of certain officers belonging to the navy.

Receipts or acknowledgments of payment indorsed upon any bills, drawn pursuant to any former act or acts of parliament, by the commissioners of the navy, or by the commissioners for victualling the navy, or by the commissioners for managing the transport service, and taking care of sick and wounded seamen, upon and payable by the treasurer of the navy.

Receipts given solely for the duty on insurances against fire; and receipts given for the premium and duty on such insurances, to be liable only to the receipt duty in respect of the premium.

See also the general exemptions at the end of this part of the schedule.

Penalty on writing or signing receipts unstamped.

By stats. 31 *G.* 3. *c.* 25. § 17. & 35 *G.* 3. *c.* 55. § 8. If any person shall write or sign any receipt liable to any stamp duty, without being first duly stamped as aforesaid; or with a stamp of a lower value than is herein directed; he shall forfeit 10*l.* if the sum paid or expressed therein shall not amount to 100*l.*; and 20*l.* if the same amount to 100*l.* or upwards.

Inserting a less sum than actually paid, or dividing the same.

By stat. 35 *G.* 3. *c.* 55. § 9. Every person who shall give any receipt or writing acknowledging the payment of money, in which a less sum shall be expressed than the sum actually paid or received, or who shall separate or divide the sum actually paid or received into divers sums, or shall write off any part of any debt, or demand, or be guilty of or concerned in any contrivance with intent to defraud H. M. of the duties by this act imposed, shall forfeit 50*l.*

Payee to discharge the duty,

And by stat. 43 *G.* 3. *c.* 126. § 5. Any person, or any agent of any person from whom any sum shall be due or payable, and who shall have paid such sum, may provide a stamp with the proper duty or of some higher rate of duty than required, and demand of the person entitled to such sum, or any agent to whom the same shall have been paid, a receipt for such sum, and also the amount of the duty thereon as aforesaid; and if such person refuse to give such receipt upon demand thereof, or to pay the amount thereof, every such person shall forfeit for each offence 10*l.* to be reco-

on pain of 10*l.*

vered as any penalty may be recovered under 31 *G.* 3. *c.* 25. & 35 *G.* 3. *c.* 55.

To be stamped before written upon.

By stat. 31 *G.* 3. *c.* 25. § 19, 20. & 35 *G.* 3. *c.* 55. § 10, 11. All vellum, parchment, and paper liable to any stamp duty as aforesaid, shall be stamped before the same be written or printed upon; or may be brought to the said commissioners or their officers to be stamped within 14 days after such receipts shall be given or bear date, and shall be stamped on payment of 5*l.* over and above the duty; and if brought after 14 days within one calendar month, on payment of 10*l.* over and above the duty.

Penalties, how to be recovered, See 44 G.3. c.98. § 10. *ante* p.268.

By stat. 35 *G.* 3. *c.* 55. § 12, 13. All penalties by this act incurred may be sued for in the courts at *Westminster*; or any neighbouring justice may hear and determine any offence which subjects the offender to any pecuniary penalty; who may, on complaint made within three calendar months, summon the party accused, and the witnesses, and examine into the matter of fact; and on confession, or the oath of one witness, may give judgment therein and levy such penalty by distress on the goods of the offender, which if not redeemed within six days, may be sold; and such penalty shall be distributed, half to the king, and half to the informer; and for want of sufficient distress, the offender shall be committed to prison for three calendar months, unless such penalty shall be sooner paid.

Appeal.

§ 13. If any person shall find himself aggrieved by the judgment of such justice, he may, upon giving security to the amount of such penalty, forfeiture and costs, appeal to the next sessions which shall happen 14 days next after such conviction, on giving reasonable notice; and in case such judgment be affirmed, they may award the person appealing to pay such costs as to them shall seem meet.

Mitigation.

Stat. 31 *G.* 3. *c.* 25. § 26. & 35 *G.* 3. *c.* 55. § 14. Provide that such justice may, where he shall see cause, mitigate any such penalty, so as not to reduce the same to less than one moiety thereof over and above the costs.

Witnesses.

Witnesses not appearing, having been duly summoned, without reasonable cause to be allowed by such justice, or refusing to give evidence, shall forfeit 40*s.* to be recovered in like manner. See 31 *G.* 3. *c.* 25. § 27. and 35 *G.* 3. *c.* 55. § 15.

Counterfeiting stamps.

Persons counterfeiting or forging any stamp hereby directed to be made use of, shall be guilty of felony without benefit of clergy. See stat. 31 *G.* 3. *c.* 25. § 29.; 35 *G.* 3. *c.* 55. § 17.; 43 *G.* 3. *c.* 126. § 11.; 52 *G.* 3. *c.* 143. § 7.; and 55 *G.* 3. *c.* 184. § 7. *ante* page 268.

Powers of former acts to extend to 31 G.3. c.25. 35 G.3. c.55. 43 G.3. c.126. 55 G.3. c.184.

All powers given by former acts relating to the stamp duties are extended to 31 *G.* 3. *c.* 25. by § 30.; to 35 *G* 3. *c.* 55. by § 18.; 43 *G.* 3. *c.* 126. by § 12.; and to 55 *G.* 3. *c.* 184. by § 8.

1 & 2 G.4. c.55.

[See stat. 1 & 2 *G.* 4. *c.* 55. explaining and regulating the Stamp duties on deeds relating to lands in *G. B.* and *Ireland*, and on Bonds where one or more obligors are resident in *Ireland*.]

3 G.4. c.117.

By stat. 3 *G.* 4. *c.* 117. intituled "*An act to reduce the stamp duties on Reconveyance of Mortgages, and in certain other cases; and to amend an act of the last session of parliament, for removing doubts as to the amount of certain stamp duties in* G. B. *and* Ireland *respectively*," (passed 5th *August*, 1822.) After reciting stats.

3 G.4. c.117.
Certain duties repealed.

55 *G.* 3. *c.* 184. & 56 *G.* 3. *c.* 56. it is enacted, that from and after the expiration of ten days after the passing of this act, the *ad valorem* duties, and other duties which were imposed on any *transfer, assignment, disposition, assignation,* or *reconveyance of any mortgage, or of other such security,* shall be repealed.

New duties:
On transfers of mortgages in Great Britain and Ireland:

And by § 2. in lieu of the duties repealed, there shall, upon any transfer, assignment, disposition, assignation, or re-conveyance of any mortgage, or of any other security in the said acts, and the schedules thereto annexed, severally mentioned, provided no further sum of money or stock be added to the principal already secured, be paid in *G. B.* a stamp duty of 1*l.* 15*s.*, and in *Ireland* 1*l. British* currency, for the first skin of parchment, or sheet or piece of paper, upon which such transfer, &c. be ingrossed, &c.; and where any such transfer, &c. in *G. B.* charged with a duty of 1*l.* 15*s.*, together with any schedule, receipt, or other matter put or indorsed thereon, or annexed thereto, shall contain 2160 words or upwards, then for every entire quantity of 1080 words contained therein, over and above the first 1080 words, there shall be paid a further progressive duty of 1*l.* 5*s.*; and for every skin or piece of vellum or parchment, or sheet or piece of paper beyond the first, upon which any such transfer, &c. shall be ingrossed, written, or printed in *Ireland,* there shall be paid the sum of 10*s. British* currency; and if any further sum of money or stock shall be added to the principal money or stock already secured, the *ad valorem* duty on mortgages, payable under the said recited acts, shall be charged only in respect of such further money or stock; and upon every promissory note, whether in the form of a bank note, bank post bill, or otherwise, which shall be issued by the governor and company of the bank of *Ireland,* or by any banker or bankers in *Ireland,* who shall have registered his or their name or names, or firm, in manner directed by law, where the sum therein expressed shall not amount to 5*l.*, there shall be paid the sum of 1½*d Irish* currency.

On bankers notes under 5*l.* in Ireland.

For exempting mortgages from *ad valorem* stamps in cases where the *ad valorem* bond duty shall have been previously paid in Great Britain and Ireland.

By § 3. where any deed or other instrument already made or hereafter to be made as an additional or further security for any sum of money, or any share in any of the government stocks or funds, or in the stock and funds of the governor and company of the bank of *England* or of the bank of *Ireland,* already or previously secured by any bond on which the *ad valorem* duty on bonds, charged by the said recited acts of the 55 & 56 *G.* 3., and the schedules thereto annexed, shall have been paid, such deed or other instrument shall be and be deemed to be and to have been exempt from the several *ad valorem* duties charged by the said acts, and the said schedules, on mortgages, and shall be charged only with the ordinary duty payable on deeds in general, in *G. B.* and *Ireland* respectively; but if any further sum of money or stock shall be added to the principal money or stock already secured, the said *ad valorem* duties shall be charged in respect of such further sum of money or stock; and if necessary for the sake of evidence, the deeds and instruments hereby exempted from the said *ad valorem* duties shall be stamped with a particular stamp for denoting or testifying the payment of the *ad valorem* duty upon all the deeds and instruments relating to the particular transaction, provided such deeds and instruments shall be produced at the stamp office in *London* or *Dublin* (as the case may require), and

shall appear to be duly stamped with the duties to which they are liable. 3 G.4. c.117.

§ 4. In all cases of promotion in the customs, the *ad valorem* duty shall be paid on the appointment to which such officer shall be promoted, in respect of the increase only of such salary, fees, and emoluments, above the salary, fees, and emoluments of the office or employment from which the party promoted shall have been removed, unless the amount of such increase shall be equal in amount to the original salary; and in that case, the full *ad valorem* duty shall be paid on such appointment.

Ad valorem duties on appointments of custom house officers promoted shall be payable only in respect of increased salary, &c.

§ 5. Repeals so much of stat. 1 & 2. *G.* 4. *c.* 55. § 1. as relates to any covenant, agreement, or obligation for the payment of any money which, either by law, or by the terms of such covenant, agreement, or obligation, shall be payable in *Ireland.*

Part of act of 1&2 G.4. c.55. repealed as to Ireland.

§ 6. Duties to be under the management of the commissioners of stamps. Powers of former acts extended to this act.

The addition of another obligor after the bond has been executed, but before the sheriff has accepted it, with the assent of the sheriff and the prior obligors, does not vacate the bond or make a new stamp necessary. — *Matson* v. *Booth, T.* 56 *G.*3. 5 *M.* & *S.* 223.

By stat. 5 *G.* 4. *c.* 41. § 1. it is enacted that from and after the 10th *October* 1824, the several stamp duties payable in *G. B.* and *Ireland* in respect of the several instruments, matters, or things set forth in the annexed schedule; and also in respect of any bond to the Lord Chancellor by any creditor petitioning for a commission of bankruptcy; and also of any bond to any sheriff or other person upon the replevy of any goods or chattels; and also of the assignment of such bonds; also of any copy or extract of any will or codicil deposited in any ecclesiastical court in *G. B.* or *Ireland*; also of any letter or power of attorney or proxy filed in any such ecclesiastical court, and of the vellum, parchment, or paper upon which any such instrument shall be written or printed, shall cease and determine. [The instruments described in the schedule to this act being confined to law proceedings in the courts of *G. B.* and *Ireland,* it is unnecessary to particularize them here.]

5 G. 4. c. 41. Stamp duties on law proceedings repealed.

By § 3. Any suit, prosecution, or proceeding against any persons for the taking or detaining, or for the losing, damaging, or destroying of any vellum, parchment, or paper upon which any stamp or stamped mark or marks denoting any duty or duties imposed by law hath been put, or for any other cause of action or proceeding relating to the same respectively, shall and may be commenced, instituted and proceeded in, in the name of H. M. or in the name of the Attorney or Solicitor General in *England* or *Ireland,* or of the Advocate or Solicitor General in *Scotland,* respectively for the time being, for and in behalf of his said majesty, and in all such suits the property in such vellum, parchment, or paper shall be described to be and shall be deemed and taken to be in H. M., and the value of the same respectively shall be deemed and taken to be the amount of the value of the vellum, parchment, and paper, and of the stamp duties upon the same. " And further, in every prosecution for embezzling or stealing such vellum, parchment, or paper so stamped, marked, and impressed as aforesaid, or for any other offence for or relating to the same respectively, it shall be sufficient in the indictment or in-

Prosecution for taking, losing, damaging, or destroying stamped vellum parchment, or paper, may be in the name of the king or attorney-general.

formation to state and describe the property in the same to be in H. M., his heirs and successors, which property shall be deemed and taken to be vested in his said majesty, his heirs and successors accordingly."

Stare. See Vol. II. tit. **Bent.**

Starch, See Vol. II. tit. **Excise.** § IV.

Steam Engines. See Vol. V. tit. **Nuisance,**

Stocks.

IT is said that every vill of common right is bound to provide a pair of stocks. 2 *Haw.* *c.* 11. § 5. *Kitch.* 13.

They ought to be provided at the charge of the town; for originally they were not to punish, but to keep men in hold. 1 *Wood's Inst.* *b.* 4. *c.* 1.

And the constable, by the common law, may confine offenders in the stocks by way of security, but not by way of punishment.

But by divers statutes, the stocks are also appointed for the punishment of offenders, in sundry cases, after conviction.

Stock of Companies.

[8 G. 1. c. 22.]

8 G. 1. c. 22. BY stat. 8 *G.* 1. *c.* 22. § 1. If any person shall forge or counterfeit any power or authority to transfer any share of any capital stock of any company established by act of parliament, or to receive the same, or shall forge or counterfeit the name of any proprietor or person entitled to a dividend, or shall fraudulently demand or endeavour to have any such share received by virtue of such counterfeit instrument, or shall personate any proprietor of any such share of such stock; he shall be guilty of felony without benefit of clergy. See Vol. II. tit. **Forgery.**

Stocking Frames.

[28 G. 3. c. 55. — 4 G. 4. c. 46.]

28 G. 3. c. 55. Framework-knitters hiring

BY stat. 28 *G.* 3. *c.* 55. § 1. If any framework-knitter, who shall rent, or take by the hire any stocking-frame, either with or without any machine or engine thereto annexed, or therewith to

be employed, shall refuse to yield up and re-deliver the same with the machine or frame to the person of whom he shall so rent it after 14 days' previous notice, he shall, on conviction by the oath or solemn affirmation of the owner or employer of such frame, or of any other witness, before one justice where the offence is committed, or where the person so charged shall inhabit, for every such offence forfeit 20*s.* to the poor; and if not immediately paid, and such frame, &c. delivered up to the owner within six days after conviction, such justice shall commit such offender to gaol or other public prison to hard labour for any time not exceeding *three* nor less than *one* calendar month. 28 G.3. c.55. — frames, and refusing to return them on notice.

§ 2. 3. If any person so renting or taking to hire any stocking-frame, with or without such machine as aforesaid, shall sell or unlawfully dispose thereof, or the machine, &c. therewith let, without the consent of the owner; or shall wilfully and knowingly receive or purchase any such so sold or unlawfully disposed of as aforesaid, contrary to the true intent and meaning of this act; every such offender, being convicted upon indictment, shall suffer solitary imprisonment in the gaol or house of correction for not less than *three* nor exceeding *twelve* calendar months. Persons so hiring frames, and selling them.

§ 4. And if any person shall by day or night enter by force into any house, shop, or place, with an intent to cut or destroy any framework-knitted pieces, stockings or other goods, being in the frame or upon any machine or engine thereto annexed, or therewith to be used, or prepared for that purpose; or shall wilfully and maliciously cut or destroy any framework-knitted pieces, &c. being in the frame or upon the machine as aforesaid, or prepared for that purpose; or shall wilfully or maliciously break, destroy or damage any frame, machine, engine, tool, instrument or utensil used in and for the working and making any such goods as aforesaid in the hosiery or framework-knitted manufactory, without the consent of the owner; or shall break or destroy any machinery contained in any mill used or employed in preparing or spinning wool or cotton for the use of the stocking-frames; every such offender on conviction shall be adjudged guilty of felony, and be transported for not exceeding *fourteen* nor less than *seven* years. [See stat. 4 *G.* 4. *c.* 46. § 2. *ante*, p. 151. by which this act of 28 *G.* 3. *c.* 55. is in part repealed and incorporated with stats. 4 *G.* 3. *c.* 37. and 22 *G.* 3. *c.* 40.] Persons entering shops, &c. with intent to destroy, or destroying framework-knitted pieces.

Taking out and carrying away a part of a frame without which the frame will not work, is damaging the frame within the above stat. 28 *G.* 3. *c.* 55., though the part taken out was not injured, and might be replaced, and the replacing it would again make the frame perfect. So held in the following case. — The prisoner took away a half-jack from a frame; the frame would not work without it, but if restored it would work as well as ever. On question whether the taking out and carrying away of this jack, which was a piece of iron, was damaging the frame within stat. 28 *G.* 3. *c.* 55., the judges were unanimous that it was. It made the frame imperfect and inoperative. *Rex* v. *Tacey, E. T.* 1821. *MS. C. C. R.* Construction of stat. 28 G.3. c.55. What shall be deemed to be damaging a frame.

Stolen Goods. *Vide ante*, tits. **Search-warrant** and **Restitution.**

Stores.

[31 El. c. 4. — 22 C. 2. c. 5. — 9 & 10 W. 3. c. 41. — 1 G. 1. stat. 2. c. 25. — 9 G. 1. c. 8. — 17 G. 2. c. 40. — 9 G. 3. c. 30. — 12 G. 3. c. 24. — 39 & 40 G. 3. c. 89. — 49 G. 3. c. 122. — 54 G. 3. c. 159. — 55 G. 3. c. 127. — 56 G. 3. c. 80. — 4 G. 4. c. 53.]

[Vide stat. 1 & 2 G. 4. c. 75. § 16, 17. *post*, tit. 'Wreck.']

31 Eliz. c. 4. Public servants embezzling naval stores, &c.

BY stat. 31 *Eliz. c.* 4. § 1. "If any person having the charge or custody of any armour, ordnance, munition, shot powder, or habiliments of war of the queen, &c., or of any victuals provided for any soldiers, gunners, mariners or pioneers, shall for any lucre or gain, or wittingly, advisedly and of purpose to hinder or impeach H. M.'s service, embezzle, purloin, or convey away the same, to the value of 20*s.* at one or several times: such offence shall be adjudged felony," &c. By § 2. the prosecution must be commenced within a year after the offence done.

Habiliments extend to harness and all utensils that belong to war. 3. *Inst.* 79.

22 Car. 2. c. 5. deprived of clergy; but by

Stat. 22 *Car.* 2. *c.* 5. reciting the first clause of the above-mentioned act, and that the offenders were emboldened by being admitted to clergy, enacts, § 3. "that no person who shall be indicted for any offence against the said recited act of the 31 *Eliz.*; or" (which extends to any person who) "shall feloniously steal or embezzle any of H. M.'s sails, cordage or other of H. M.'s naval stores, to the value of 20*s.*, and be thereupon found guilty by verdict, or confess the same upon arraignment, or not answer directly, or stand mute or challenge peremptorily above 20, or be outlawed upon such indictment, shall be admitted to the benefit of clergy," &c.

4 G. 4. c. 53.

By stat. 4 *G.* 4. *c.* 53. After reciting that by stat. 22. *C.* 2 *c.* 5., the benefit of clergy is taken away from persons convicted of stealing or embezzling any of H. M's sails, cordage, or any other of H. M.'s naval stores, to the value of 20*s.*; provided that it shall be lawful for the judges to grant a reprieve for the staying of the execution of such offenders, and to cause them to be transported for the space of seven years, and kept to hard labour; and also reciting that it is expedient that a lesser degree of punishment than that of death should be provided for the offences from which the benefit of clergy is so taken away as aforesaid, and that the same punishment should be extended in manner after mentioned; it is enacted, that so much of the said recited act as takes away the benefit of clergy from the persons convicted of the offences before mentioned, shall be repealed; and that from and after the passing of this act, every person who shall be lawfully convicted of stealing or embezzling H. M.'s ammunition, sails, cordage, or naval or military stores, or of procuring, counselling, aiding or abetting any such offender, shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned only, or to be im-

so much of stat. 22 C. 2. c. 5. as takes away benefit of clergy from persons convicted of stealing naval or military stores, repealed, and offenders liable to transportation or imprisonment.

prisoned and kept to hard labour in the common gaol or house of correction for any term not exceeding seven years.

By stat. 9 *G.* 3. *c.* 30. § 5. The treasurer, comptroller, surveyor, clerk of the acts or any commissioner of the navy, may act as justices, in causing the offenders to be apprehended, committed, and prosecuted for the same. 9 G.3. c.30.

By stat. 1 *G.* 1. st. 2. *c.* 25. § 3. Any of the principal officers or commissioners of the navy may issue warrants to search for naval stores, as justices may in cases of felony, and punish the offenders by fine not exceeding 20*s.*, or imprisonment not exceeding one week, the value of the goods not exceeding 20*s.*; and if the offence requires a higher punishment, may commit him to the next gaol or to the custody of their messenger till he finds surety or sureties to appear in the exchequer, or other court where the king shall question him for the same within one year, on process duly served for that purpose on such offender. 1 G.1. st.2. c.25. Summary jurisdiction in cases of small embezzlements, &c.

§ 6. And every person who shall counterfeit the hand of the treasurer, comptroller, surveyor, clerk of the acts, or of any commissioner of the navy, or the hand of the signing or vouching officer of H. M.'s navy, ships, or yards, to any bill, ticket, or papers, by virtue whereof H. M.'s naval treasure may be disposed of, or knowingly produce the same, he may be committed to prison by the said officers and commissioners, or any of them, until he find surety to appear at the next assizes or quarter sessions, to be there proceeded against according to law. Counterfeiting the hand of the treasurer, &c.

By stat. 9 & 10 *W.* 3. *c.* 41. It is enacted, " that it shall not be lawful for any person or persons whatsoever, other than persons authorised by contracting with the king's principal officers or commissioners of the navy, ordnance, or victualling-office, for H. M.'s use, to make any stores of war or naval stores whatsoever with the marks usually used to and marked upon H. M.'s said warlike and naval or ordnance stores; viz. any cordage of three inches and upwards, wrought with a white thread laid the contrary way; or any smaller cordage, viz. from three inches downwards, with a twine in lieu of a white thread, laid to the contrary way as aforesaid; or any canvass wrought or unwrought, with a blue streak in the middle; or any other stores with the broad arrow, by stamp, brand, or otherwise; upon pain that every such person or persons who shall make such goods so marked as aforesaid, not being a contractor with H. M.'s principal officers or commissioners of the navy, ordnance, or victuallers for H. M.'s use, or employed by such contractor for that purpose as aforesaid, shall for every such offence forfeit such goods and 200*l.* with costs of suit, one moiety to the king, the other to the informer, to be recovered by action of debt," &c. 9 & 10 W.3. c.41. No warlike or naval stores, except for the king's use, shall be made with the king's marks.

By § 2. " Such person or persons in whose custody, possession, or keeping such goods or stores marked as aforesaid shall be found, not being employed as aforesaid; and such person or persons who shall conceal such goods or stores marked as aforesaid, being indicted and convicted of such concealment, or of the having such goods found in his custody, possession, or keeping, shall forfeit such goods and 200*l.*, together with the costs of prosecution; one moiety to the king, and the other to the informer, to be recovered as aforesaid, and shall also suffer imprisonment till payment and performance of the said forfeiture; Persons in whose custody such marked stores are found, and who shall conceal the same, shall forfeit such goods and 200*l.* and be imprisoned till payment.

9 & 10 W. 3. c. 41.

unless such person shall upon his trial produce a certificate under the hand of three or more of the king's officers or commissioners of the navy, ordnance, or victuallers, expressing the numbers, quantities, or weights of such goods as he or she shall then be indicted for, and the occasion and reason of such goods coming to their hands or possession." *Vide Cole's case, post, p.* 294.

Extended to timber, &c. by 9 G. 1. c. 8.

In addition to which, by stat. 9. *G.* 1. *c.* 8. § 3. "Every person lawfully convicted of having in his custody any timber, thick stuff, or plank, marked with the broad arrow, by stamp, brand, or otherwise, or of concealing any timber, &c. so marked, shall suffer, forfeit, and pay as for having, keeping, or concealing any other warlike, naval, or ordnance stores, contrary to the said act" of 9 & 10 *W.* 3. *c.* 41.

9 G. 1. c. 8.

By stat. 9 *G.* 1. *c.* 8. § 4. The court may mitigate the penalty inflicted by the st. 9 & 10 *W.* 3. as they shall see cause, and commit the offender so convicted to the common gaol of the county or place where the offence shall be committed, until payment of the penalty and forfeiture, or punish such offender corporally by causing him to be publicly whipped, OR (*a*) committed to some public workhouse, there to be kept to hard labour for six months, or a less time, as to such judge in his discretion shall seem meet.

17 G. 2. c. 40.

Stat. 17 *G.* 2. *c.* 40. § 10. After reciting doubts whether the two statutes 9 & 10 *W.* 3. *c.* 41. and 9 *G.* 1. *c.* 8. gave jurisdiction to justices of assize, justices of peace, &c. to try such offences, enacts and declares, that "justices of assize and justices of the peace at the general quarter sessions for any county, city, &c. may hear and determine such offences, &c., and may impose any fine not exceeding 200*l.* and mitigate the penalty, &c., and commit the offender to the common gaol of the county until payment, &c., *or in lieu thereof* may punish such offender corporally, by causing him to be publicly whipped, AND committed to some house of correction or public workhouse, there to be kept to hard labour for three months, or less time, as to such judge, &c. in his discretion shall seem meet."

Or to punish the offender corporally.] In the case of *R.* v. *Bland*, 5 *T. R.* 370., the defendant's counsel contended that, as their client could pay the penalty, the court had no authority to inflict corporal punishment. But the court said that the words of the statutes were in the disjunctive, enabling them either to impose a penalty, *or to punish the offender corporally:* and that this construction had already been put on the statutes in several instances, particularly in the case of *R.* v. *Newell*, *M.* 33. *G.* 3. And this appearing to the court to be a gross case, they sentenced the defendant to *Clerkenwell* prison for three months, there to be kept to hard labour, and during that time to be publicly whipped on *Clerkenwell Green* for the space of 100 yards.

Together with the costs of prosecution.] Though there was no instance prior to *Trin.* term, 46 *G.* 3. in which the defendant had been ordered to pay the costs, the court of K. B. adjudged

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(*a*) In stat. 9 *G.* 1. *c.* 8. § 4. it is OR committed. In 17 *G.* 2. *c.* 40. § 10. it is AND committed.

the defendaut (*A. Chapple*) to pay the penalty of 200*l*., together with the costs. *5 T. R.* 371. *n.*

For the provisions of the 39 & 40 *G.* 3. c. 89. as to a person's having stores of war in his possession, see title Cordage, &c. § II. Vol. I.

See also stat. 54 *G.* 3. *c.* 60. Vol. I. tit. Cordage, § II., by which the provisions of 9 & 10 *W.* 3. *c.* 41. and 39 & 40 *G.* 3. *c.* 89. are extended to *cordage worked with worsted threads;* and stat. 55 *G.* 3. *c.* 127. Vol. I. *ib.* which recites (§ 2.) the several statutes from the 9 & 10 *W.* 3. to the 53 *G.* 3. *c.* 126. (which last-mentioned act is repealed) and extends the provisions of 9 & 10 *W.* 3. *c.* 41. § 1. 2. 4, 5. 8. — 9 *G.* 1. *c.* 8. § 3, 4. — 17 G. 2. *c.* 40. § 10. and 39 & 40 *G.* 3. *c.* 89. to all public stores whatsoever, under the care and control of any officer or person in H.M.'s service.

See also stat. 54 *G.* 3. *c.* 159. § 10. Vol. I. tit. Cordage, § II.

Further punishment of persons convicted of offences against 9 & 10 W. 3.

By stat. 39 & 40 *G.* 3. *c.* 89. § 2. Every person (except as in § 1. of this act) in whose custody shall be found any canvass or buntin marked as aforesaid not being new, nor more than one-third worn, and all persons who shall be convicted of any offence contrary to the said act of 9 & 10 *W.* 3. besides forfeiting such stores and the sum of 200*l.* as therein specified, shall be punished by pillory *, whipping, and imprisonment, or by any of the said ways, in such manner and for such time as to the judge or justices before whom such offender shall be convicted may seem meet; provided that such judge or justices may mitigate such penalty of 200*l.* as they shall think fit.

* See 56 G. 3. c. 138.

Whipping and imprisonment.] *R.* v. *Bridges*, 8 *East*, 53. The defendant was brought up to receive judgment after conviction on stat. 9 & 10 *W.* 3. *c.* 41. § 2. for unlawfully having in his possession naval stores, &c., and judgment was about to be pronounced that he should be imprisoned in the house of correction for the county of *Surry*, and there kept to hard labour for three calendar months, and once during that time publicly whipped. This would have been warranted by stat. 17 *G.* 2. *c.* 40. § 10. reciting stats. 9 & 10. *W.* 3. *c.* 41. and 9 *G* 1. *c.* 8., but a doubt occurring how far the power of sentencing to hard labour was taken away by the subsequent stat. 39 & 40 *G.* 3. *c.* 89. § 2. the court, upon further consideration and comparing the different provisions of these statutes, were of opinion that the power of sentencing to hard labour was taken away by the latter statute, and therefore pronounced judgment that the defendant should be imprisoned in the house of correction for the county of *Surry* for three calendar months, and be once during that time publicly whipped.

12 G. 3. c. 24. Burning or destroying stores

By stat. 12 *G.* 3. *c.* 24. If any person shall, either in this realm or in any place thereto belonging, wilfully and maliciously set on fire, burn, or otherwise destroy, or cause or aid therein, any of H. M.'s military, naval, or victualling stores or other ammunition of war, or any place where any such stores or ammunition shall be placed or kept, he, his aiders and abettors, shall be guilty of felony without benefit of clergy. And they who commit such offence out of the realm may be tried either where the offence was committed, or in any county within this realm. 2 *East's P. C.* 1094.

Embezzle, &c. to the value of 20*s.*] Though the statute (31 *El. c.* 4.) only speaks of embezzling or stealing stores to the value of 20*s.* still any of the officers who have a bare charge of the stores in the

king's warehouses, or a mere authority to deliver them out, may be guilty of felony at common law in stealing them to any amount from such places of deposit. Accordingly, in *Thorne's* case, 2 *East's P. C.* 622., where it appeared that the prisoner was foreman of one of the storehouses in *Plymouth* dock containing naval stores, and had given security in 200*l.* for the faithful discharge of his duty, and was entrusted with the receiving and delivering out again of the stores in the absence of the clerk, whose proper duty it was when present; and that certain kersey was cut off by him from a bale in the stores, and delivered by him to an accomplice to be taken out of the yard, though the value were under 20*s.* he was by the direction of the court convicted of larceny at common law in stealing the kersey.

Thorne's case, Exeter Spr. ass. 1800.

Receive or have in his possession.] Under the statutes for protecting the king's stores, the king's mark denotes the original ownership; and there the *onus probandi* lies on the party to account satisfactorily for his possession according to the regulations prescribed, otherwise the bare fact of possession concludes him. But even here the presumption of the *malus animus* arising from the bare fact of possession may be rebutted by circumstances, as in the following case: A widow woman was indicted before Mr. Justice *Foster*, *Fost. Append.* 439. *edit. of* 1792. 2 *East's P. C.* 765., upon the western circuit, on stat. 9 & 10 *W.* 3. *c.* 41. for having in her custody divers pieces of canvass, marked with the king's mark, in the manner described in the act, she not being a person employed by the commissioners of the navy to make the same for the king's use. The canvass was marked as charged in the indictment, and was clearly proved to be such as was made for the use of the navy, and to have been found in the defendant's custody. The defendant did not attempt to show that she was within any exception of the act, as being a person employed to make canvass for the use of the navy; nor did she offer to produce any certificate from any officer of the crown, touching the occasion and reason of such canvass coming into her possession. Her defence was, that when there happened to be in H. M.'s stores a considerable quantity of old sails, no longer fit for that use, it had been customary for the persons entrusted with the stores to make a public sale of them in lots, larger or smaller, as best suited the purpose of the buyers; and that the canvass produced in evidence, which happened to have been made up long since, some for table-linen and some for sheeting, had been in common use in the defendant's family a considerable time before her husband's death, and upon his death came to the defendant, and had been used in the same public manner by her to the time of the prosecution. This was proved by some of the family, and by the woman who had frequently washed the linen. This sort of evidence was strongly opposed by the counsel for the crown, who insisted, that, as the act allows of but one excuse, the defendant, unless she could avail herself of that, could not resort to any other. That if the canvass were really bought of the commissioners, or of persons acting under them, there ought to have been a certificate taken at the time of the purchase; and the second section admits of no other excuse. But the judge was of opinion, that though the clause of the statute, which directs the sale of these things, had not pointed out any other way for indemnifying the buyer than the certificate; and though

One became possessed on the death of her husband of canvass stores, which had been purchased by him in his lifetime at a public sale, and had been many years made up into household furniture, but no evidence was given of any certificate of such sale being lawful, as required by stat. 9 & 10 W. 3. or of any excuse allowed by the act; yet the possession being by act of law without fraud; held not within the penalty of the statute.

the second section seemed to exclude any other excuse for those in whose custody they should be found; yet still the circumstances attending every case which might seem to fall within the act ought to be taken into consideration; otherwise a law calculated for wise purposes might, by too rigid a construction of it, be made a handle for oppression. There was no room to say, that this canvass came into the possession of the defendant by any act of her own. It was brought into family use in the lifetime of her husband, and it continued so to the time of his death; and by act of law it came to her. Things of that kind had been frequently exposed to public sale; and though the act pointed out an expedient for the indemnity of the buyers, yet probably few buyers, especially where small quantities had been purchased at one sale, had used the caution suggested to them by the act. And if the defendant's husband really bought the linen at a public sale, but neglected to take a certificate, or did not preserve it, it would be contrary to natural justice, after such a length of time, to punish her for his neglect. He therefore thought the evidence given by the defendant proper to be left to the jury; and directed them, that if, upon the whole evidence, they were of opinion, that the defendant came to the possession of the linen without any fraud or misbehaviour on her part, they should acquit her; and she was accordingly acquitted.

A defendant, against whom the possession of stores is proved, may discharge himself by other evidence than that of a navy-board certificate.

In *R.* v. *Banks*, 1 *Esp.* 144., which was the case of an information upon stats. 9 & 10 *W.* 3. *c.* 41. and 17 *G.* 2. *c.* 40. § 10., Ld. *Kenyon* C. J. said, that though in prosecutions under these statutes it was sufficient for the crown to prove the finding of the stores with the king's mark in the defendant's possession, to call upon him to account for that possession and the manner of his coming by them, so as to throw the *onus* upon the defendant, of proving that he had legally become possessed of them; yet, that the defendant had other means of showing that he had lawfully become possessed of them than by the production of the certificate from the navy board: as for example, he might show that he had bought them from another person who was in the practice of buying stores at the navy sale; and who, therefore, might fairly be presumed to have had the regular certificate, but who, when he sold part to the defendant, could not, consistent with his own safety, part with the certificate he had obtained, of his having been the purchaser of the whole lot.

39 & 40 G. 3. c. 89. Commissioners of the navy, &c. may sell marked stores, and the buyer be protected by a certificate.

By stat. 39 & 40 *G.* 3. *c.* 89. § 25. it is enacted, that the commissioners of the navy, ordnance, or victualling, may sell and dispose of marked stores, as before the making of the act, and that persons buying them of the commissioners may keep them without incurring any penalty, upon producing a certificate under the hand and seal of three or more of the commissioners, that they bought the stores from them, or a certificate from such persons as shall appear to have bought the stores from the commissioners, that such stores were stores or part of stores bought of the commissioners. In these certificates the quantity of the stores are to be expressed, and the time when and where bought of the commissioners; and the commissioners, or any three of them, and also the persons selling the stores, are directed, from time to time, to give such certificate to the buyers desiring the same.

See also stat. 56 *G.* 3. *c.* 80. Vol. I. tit. Cordage, § 11.

Cole's case.

An indictment, *Winchester*, *March*, 1801, *cor. Le Blanc J.* 2 *East's P. C.* 767., charged that *Thomas Cole*, on the 28th *January*, 1801, unlawfully, willingly, and knowingly did *receive and have* in his custody, possession, and keeping, certain naval stores of the king, being all marked with the broad arrow, he not being a contractor, &c. against the statute, &c. The jury found the prisoner guilty; but said they did not find that he *received* the stores after the 28th *July*, 1800, but only that he had them in his possession after that day. Judgment was thereupon respited to take the opinion of the judges, a majority of whom inclined to think, that the statute was to be construed in the disjunctive, and the word *or* (receive *or* have) not to be taken as *and;* but because of the disagreement of some, and that the case was not likely to occur again, the prisoner, on the finding of the jury, was recommended to mercy. It seemed, however, to be agreed that the case was not within stat. 9 & 10 *W.* 3. *c.* 41., because the goods were not charged to have been found in the prisoner's possession.

Difference between receiving and having in possession.

49 G. 3. c. 122. Dealers in marine stores shall have their names painted on their storehouses.

By stat. 49 *G.* 3. *c.* 122. § 17. All persons who shall trade or deal in buying and selling anchors, cables, sails, or old junk, old iron, or marine stores of any kind or description, shall have their names, with the words "dealer in marine stores," painted distinctly in letters of not less than six inches in length upon the front of all their storehouses, warehouses, and other deposits for such goods; on pain of forfeiting, on conviction by oath of one witness, or confession before any justice or magistrate of any jurisdiction where such storehouse, &c. shall be, a sum not exceeding 20*l.* nor less than 10*l.* half to the informer, and half to the poor where the offence shall be committed. And such dealers or traders shall not cut up any cable or part of a cable, exceeding five fathoms in length, or uncant, untwine, or unlay the same into junk or paper stuff, without a permit from some neighbouring justice or magistrate; which permit shall not be granted unless upon affidavit that it had been *bonâ fide* purchased and without fraud by such person, and without any knowledge or suspicion on his part that the same had been or were dishonestly come by; and in which affidavit shall be specified the particular quality and description of such cable, the name of the seller; and the affidavit shall be set forth at length in the permit, on pain of forfeiting for the first offence not exceeding 20*l.* nor less than 10*l.*; for every second or further offence not exceeding 50*l.* nor less than 20*l.*, to be recovered before a justice, one half to the informer and the other half to the poor.

Penalty 20*l.*

See also stat. 1 & 2 G. 4. c. 75. § 16. *post, tit.* Wreck.

Such dealers shall not cut up cables without a permit from a magistrate, to be granted on affidavit, &c.

Dealers shall keep an account of old stores bought by them.

By § 18. All such dealers in marine stores shall keep a book, in which shall be regular entries of all such old marine stores bought by them from time to time, containing an account when bought, and of the names and abodes of the sellers. And before any person, obtaining such permit, shall cut up the same, there shall be published, one week at least before, an advertisement in some public newspaper printed nearest to the storehouse, &c. notifying that such party had obtained such permit for cutting up such cable, of such kind and quality, and specifying where the articles are deposited; whereupon all persons who may have just cause to suspect that such articles are the property of such person, and shall have verified such suspicion on oath before some justice or magistrate, near the said storehouse, &c. may by warrant there-

Shall advertise before cutting up of cordage.

Inspection of such accounts may be demanded by parties interested.

upon granted require of such dealer the production and examination of such book of entries, and inspection of the cables described in the permit; and in case such dealer shall neglect or refuse to produce to such person such book, or to keep such book, or to permit such inspection or examination, or neglect so to publish one such advertisement as aforesaid, he shall forfeit for the first offence not more than 20*l.* nor less than 10*l.*, for every further offence, not exceeding 50*l.* nor less than 20*l.*, one half on conviction before any justice or magistrate residing near, as aforesaid, to go to the informer, and half to the poor where the offence shall be committed; and if the said penalties by this act imposed, together with the charges incident to the conviction, be not immediately paid, they may be levied by warrant of distress and sale under hand and seal of such justice or magistrate; and if there be no sufficient distress found, the offender may be committed by such justice, &c. to gaol, in case of any first offence for six calendar months; and in case of any second or further offence, for 12 calendar months, unless the penalty and charges shall be sooner paid. 49 G.3. c.122. Penalties on dealers for neglect.

For the power of appeal see *this statute*, § 21. *et seq.* title Ships, *ante*.

Stray. See Vol. I. tit. Estray.

Subornation. See Vol. III. tit. Perjury.

Summons.

[3 G.4. c.23. § 2.]

IN all legal proceedings, the person complained of ought to have notice of the charge laid against him, and to have an opportunity of being heard in his own defence. Consequently, where a person is accused before the justices, they ought to summon the party to appear, or issue their warrant to bring him before them. The manner of conveying the parties is sometimes directed by the acts of parliament creating the respective offences, which therefore ought to be pursued accordingly. In other cases, where it is left discretionary in the justices, it seemeth most agreeable to the mildness of our laws to put the party to no more inconvenience than needs must; and, therefore, where the case will bear it, a summons seems more apposite than a compulsory process. But in cases of sureties of the peace, petty larcenies and other felonies, and generally where the king is party, and also in cases between party and party where the body of the offender is liable, a warrant is the regular process, and not a summons. Summons where proper. Warrant where proper.

In the summons it is usual, and upon many accounts convenient, to fix not only a day but a particular time of the day for the appearance of the party; but if he appear at the time, and the justice shall not attend, he is not to go away, but must wait during the remaining part of the day, for many things may happen to hinder the justice's immediate attendance. Persons summoned must wait.

Service of the summons.

It has been made a question in some cases whether the service of the summons must be *personal*. It seems in general necessary that it should be so, unless where personal service is expressly dispensed with by the statute. Ld. C.J. *Parker* was of opinion, 10 *Mod*. 345., and the provisions specially introduced into many acts of parliament to make a service at the dwelling-house sufficient, seem to justify the inference, that the law in other cases is understood to require a service upon the person. *Paley*, 18. *Nares*, 12. (*n*.) *Bosc*. 134. See tit. Conviction, Vol. I. and Vol. II. p. 577.

3 G.4. c.23. One justice, &c. may receive original information, &c. where two or more justices, &c. empowered to hear and determine.

By stat. 3 *G*. 4. *c*. 23. § 2. it is enacted, "That in all cases where two or more justices, deputy lieutenants, or others, are authorised and required to hear and determine any complaint, one justice, deputy lieutenant, or such other person, shall be competent to receive the original information or complaint, and to issue the summons or warrant requiring the parties to appear before two or more justices of the peace, deputy lieutenants, or others, as the case may require; and after examination upon oath into the merits of the said complaint, and the adjudication thereupon, by any such two justices, deputy lieutenants, or other persons being made, all and every the subsequent proceedings to enforce obedience thereto or otherwise, whether respecting the penalty, fine, imprisonment, costs, or other matter or thing now enacted, or to be hereafter enacted, may be enforced by either of the said justices, deputy lieutenants, or other persons, or any other justice of the peace or deputy lieutenant for the same county, riding, or place, in such and the like manner, as if done by the same two justices, deputy lieutenants, or other persons, who so heard and adjudged the said complaint; and where the original complaint or information shall be made to any justice or justices of the peace, deputy lieutenant, or deputy lieutenants, or other person or persons different from him or them before whom the same shall be heard and determined, the form of conviction shall be made conformable and according to the fact."

General Form of a Summons.

County of } ———. } To the constable of ———.

WHEREAS information and complaint hath been made before me J. P., *esquire, one of his majesty's justices of the peace for the said county, that* A. O. *of* ———, *in the county aforesaid, labourer, on the* ——— *day of* ———, *now last past, at* ———, *in the county aforesaid, did* [here set forth the offence as charged in the information]; *these are therefore to require you forthwith to summon the said* A. O. *to appear before me at* ——— *in the said county, on* ——— *the* ——— *day of* ———, *at the hour of* ——— *in the* ———*noon of the same day, to answer to the said information and complaint, and to be further dealt with according to law. And be you then there, to certify what you shall have done in the premises. Herein fail you not. Given under my hand and seal the* ——— *day of* ———, *in the year of our Lord* ———.

Summons of a Witness.

County of } To the constable of ——.
——.

WHEREAS information hath been made before me J. P., *esquire, one of his majesty's justices of the peace for the said county, that* [here set forth the substance of the complaint]; *and that* A. W., *of* ——, *in the said county, yeoman, is a material witness to be examined concerning the same; these are therefore to require you to summon the said* A. W. *to appear before me at* ——, *in the said county, on* ——, *the* —— *day of* ——, *at the hour of* —— *in the* —— *noon of the same day, to testify his knowledge concerning the premises. Herein fail you not. Given under my hand and seal, the* —— *day of* ——, *in the* —— *year of the reign of* ——.

Sunday. See Vol. III. tit. Lord's Day.

Surety for the Peace.

OUT of the *Latin* word *pax*, the *Normans* formed their *paix*, and we (out of that) our *peace*. *Lamb.* 5. Surety of the peace.

Surety of the peace is the acknowledging of a recognisance, or bond to the king, taken by a competent judge of record for keeping the peace. *Dalt. c.* 116.

And this surety of the peace every justice of the peace may take and command by a twofold authority: 1. As a minister, commanded thereto by a higher authority; as when a writ of *supplicavit,* directed out of the chancery or K. B. is delivered to him. 2. As a judge, and by virtue of his office, derived from his commission. *Dalt. c.* 116.

Concerning which I will show,

§ I. *For what Cause Surety of the Peace shall be granted.*
II. *At whose Request it shall be granted.*
III. *Against whom it shall be granted.*
IV. *In what Manner it shall be granted.*
[21 J. 1. c. 8.]
V. *How the Peace-Warrant may be superseded.*
VI. *How the Peace-Warrant shall be executed.*
VII. *What ought to be the Form of a Recognisance of the Peace.*
VIII. *How such Recognisance shall be certified.*
IX. *How such Recognisance may be forfeited.*
[3 H. 7. c. 1.]
X. *How the Recognisance being forfeited shall be proceeded on.*
XI. *How such Recognisance may be discharged.*

§ I. For what Cause Surety of the Peace shall be granted.

For what cause to be granted.

By the commission of the peace, justices of peace have power to cause to come before them, or any one of them, all those who to any of the king's people concerning their bodies, or the firing of their houses, have used threats, to find sufficient security for the peace or their good behaviour towards the king and his people; and if they shall refuse to find such security, to cause them in the king's prisons to be safely kept, until they shall find such security.

Fear of corporal hurt, or burning his house.

Upon which Mr. *Hawkins* observes, that it seemeth clear that wherever a person has just cause to fear that another will burn his house, or do him a corporal hurt, as by killing or beating him, or that he will procure others to do him such mischief, he may demand the surety of the peace against such person, and that every justice of the peace is bound to grant it, upon the party's giving him satisfaction upon oath that he is actually under such fear, and that he has just cause to be so, by reason of the other's having threatened to beat him, or laid in wait for that purpose; and that he doth not require it out of malice or for vexation. 1 *Haw.* *c.* 60. § 6.

Being threatened with imprisonment.

It seems also the better opinion that he who is threatened to be *imprisoned* by another, has a right to demand the surety of the peace; for every unlawful imprisonment is an assault and wrong to the person of a man. And the objection that one wrongfully imprisoned may recover damages in an action, and therefore needs not the surety of the peace, is as strong in the case of battery as imprisonment; and yet there is no doubt, but that one threatened to be beaten may demand the surety of the peace. 1 *Haw.* *c.* 60. § 7.

And although the fact from which the fear arises be pardoned, the court will receive it as a ground upon which to grant the security. *R.* v. *Mendez*, 1 *Str.* 473.

Where demanded through malice or vexation.

But if the justice shall perceive that surety is demanded merely of malice, or for vexation only, without any just cause or fear, it seemeth he may safely deny it. *Dalt. c.* 116.

Also, if a man will require the peace, because he is *at variance* or in *suit* with his neighbour, it shall not be granted. *Dalt. c.* 116.

Fear of harm to his servants or cattle.

Also Mr. *Lambard* says, he takes it to be somewhat clear that a justice may not by the commission award a precept of the peace in behalf of a man that will require it, because he feareth that he will do harm to his *servants* or *cattle*. *Lamb.* 83.

And Mr. *Dalton* says, where a man is in fear that another will hurt his servants, or his cattle or other goods, this surety of the peace shall not be granted by the justice. But in this case *Fitzherbert* saith, the party may have a special writ out of the chancery directed to the sheriff, that he shall cause such person to find surety, that he shall do no hurt or damage to the other man in his body or to his servants or goods; and if he will not find surety, that then he shall arrest and detain him in prison until he shall find surety. *Dalt. c.* 116.

The reason why a man may not have sureties of the peace against another, for that he feareth he will do harm to his *servants*,

seemeth to be, because it should be the *servant's* fear in such case and not the *master's*; and the servant's own oath before the justice is necessary. And as to his *goods*, it seemeth clear that no sureties of the peace ought to be granted in that case; for the recognisance of the peace when taken is only that the party shall keep the peace towards the king and all his liege people.

Threatening a man's wife or child.

But Mr. *Dalton* says, that if a man shall threaten to hurt his *wife* or *child*, he thinks he may crave the peace at the justice's hands, by the words of the commission, and that the justice ought to grant it. *Dalt. c.* 116.

Must be a fear of present or future danger.

Note also, the surety of the peace shall not be granted, but where there is a fear of some present or future danger, and not merely for a battery or trespass that is past, or for any breach of the peace that is past; for this surety of the peace is only for the security of such as are in fear: but the party wronged may punish the offender by indictment; and the justice, if he see cause, may bind over the affrayer. *Dalt. c.* 11. That is, he may bind him over to answer unto the indictment.

§ II. At whose Request it shall be granted.

May be demanded by any person.

As to this, Mr. *Hawkins* says, it seems to be agreed at this day, that all persons whatsoever, under the king's protection, being of *sane memory*, whether they be natural and good subjects, or *aliens*, or attainted of *treason*, &c. have a right to demand surety of the peace. And it is certain a *wife* may demand it against her husband threatening to beat her outrageously, and that a *husband* also may have it against his wife. 1 *Haw. c.* 60. § 2. *Cromp.* 118.

Upon which Mr. *Crompton* observeth, that if the wife in such case cannot find sureties she shall be committed; and so, says he, a man may be rid of a shrew. *Cromp.* 118.

And if the marriage be disputed, the court will order the recognisance to be worded so as not to admit the fact. And it was directed to be as follows: "*To keep the peace towards our sovereign lord the king, and all his liege people, and particularly towards* Hannah Penn, *who hath exhibited articles of the peace against him, the said* James Bambridge, *by the name of* Hannah Bambridge, *wife of him the said* James, *and that he shall not depart the court without leave,*" *&c. R.* v. *Bambridge,* 2 *Str.* 1231.

And Mr. *Dalton* says, an infant under the age of 14 years may demand this surety, and it shall be granted to him. *Dalt. c.* 117.

But as to a person of *non-sane memory*, Mr. *Dalton* says, this surety shall neither be granted against him nor to him upon his own request; but yet if there shall be cause, the justice ought to provide for his safety. *Dalt. c.* 117. p. 271.

§ III. Against whom it shall be granted.

Against whom.

There seems to be no doubt but that it ought, upon a just cause of complaint, to be granted by any justice of the peace, against any person whomsoever, under the degree of nobility, being of sane memory, whether he be a magistrate or private person, and whether he be of full age, or under age. But infants and femes coverts ought to find security by their friends, and not to be bound

Infants, femes coverts, and peers.

themselves. And the safest way of proceeding against a *peer*, is by complaint to the court of chancery or K. B. 1 *Haw.* *c.* 60. § 3.

A peer or peeress cannot be bound over in any other place than the courts of K. B. or chancery. 4 *Blac. Com.* 253.

A peeress may demand surety of the peace against her husband, as in the cases of the Marquis of *Carmarthen*, *Fort.* 359. — Lord *Vane*, 2 *Str.* 1202. 13 *East*, 171.(*n*).—Earl of *Stamford*, *Cas. temp. Hardw.* 74. — Earl *Ferrers*, 1 *Burr.* 631. 703. — Lady *Strathmore*, 1 *T. R.* 696. — Lord *Howard*, 11 *Mod.* 109.

It is said, the fear of one cannot be the fear of another, and therefore every recognisance must be separate. *Pult.* 18. But in *M.* 23 *G.* the court of K. B. allowed three women to file joint articles of the peace against three men. *R.* v. *Nettle*, &c. 1 *Haw. P. C. c.* 60. *note to* § 5: 7*th edit.*

§ IV. In what Manner it shall be granted.

Manner of granting sureties.

It seemeth certain that, if the person to be bound be in the presence of the justice, he may be immediately committed, unless he offer sureties; and from hence it follows *à fortiori*, that he may be commanded by word of mouth to find sureties, and committed for his disobedience; but it is said that if he be absent, he cannot be committed without a warrant from some justice in order to find sureties, and that such warrant ought to be under seal, and to show the cause for which it is granted, and at whose suit, and that it may be directed to any indifferent person. 1 *Haw. c.* 60. § 9.

A justice cannot enjoin another to keep the peace under a penalty. 3 *Com. Dig.* 370. Nor commit for not finding security, until the party has been required and refused so to do. *Per Pratt* C. J. *R.* v. *Wilks*, *E.* 3 *G.* 3. 1 *Haw. c.* 60. *note to* § 9. 7*th edit.*

The articles must be verified by the *oath* of the exhibitant, an affirmation, therefore, is not sufficient. *R.* v. *Green*, 1 *Str.* 527. *Hilton* v. *Byron*, 12 *Mod.* 243. Nor will the court permit the truth of the allegations to be controverted by the defendant, but will order security to be taken immediately if no objections arise on the face of the articles. *Lord Vane's case*, 2 *Str.* 1202. 13 *East*, 171. (*n*). But where an application was made to the court to enforce the subsequent process, and the articles manifestly appeared from the corroborated affidavit of the defendant, to contain a *malicious, voluntary, and gross perjury*, the court resisted the application and committed the offender. *R.* v. *Parnell*, 2 *Burr.* 806. *R.* v. *Hon. P. Mackenzie*, 3 *Burr.* 1922. Nor will the court receive articles of the peace if the parties live at a distance in the country, unless they have previously made application to a justice in the neighbourhood. *R.* v. *Waite*, 2 *Burr.* 780. On an affidavit of the defendant, being 70 years of age, and unable to travel, a *mandamus* was granted to three justices in *Brecon* to take security on articles of the peace exhibited in the K. B. *R.* v. *Lewis*, 2 *Str.* 835. And where articles of the peace were exhibited, and it appeared that the facts charged were dene at *Portsmouth*, the court ordered an indorsement to be made upon the attachment of the peace, authorising and directing any justice in that county to take the security, there specifying the

particular sums wherein the principals and also their sureties should be bound. *Margaret Hutt's case,* 2 *Burr.* 1039. 1 *Blac. Rep.* 233. *S. C.*

The justice may make the warrant to bring the party before himself or some other justice, or he may make it to bring the party before himself only; for he that maketh the warrant for the most part hath the best knowledge of the matter, and therefore he is the fittest to do justice in the case. 5 *Rep.* 59. Warrant to bring up the party.

As to granting process of the peace or good behaviour out of the chancery or the K. B., it is enacted by stat. 21 *J.* 1. *c.* 8. that it shall not be granted but upon motion in open court, and declaration in writing, and upon oath to be exhibited by the party desiring such process, of the causes for which such process shall be granted; the motion and declaration to be mentioned on the back of the writ. And if it shall afterwards appear that the causes are untrue, the court may order costs to the party grieved, and commit the offender till paid. 21 J. 1. c. 8. Process out of the chancery or K. B.

In the case of *R.* v. *Doherty*, 13 *East*, 171., articles of the peace had been exhibited against the defendant by his wife: process issued thereon to enforce appearance: when he appeared in court with his sureties, he tendered affidavits in contradiction of the facts sworn to in the articles for the purpose of discharging them. But Lord *Ellenborough* C. J. said, the court were satified they could not receive affidavits on the part of the defendant to contradict the truth of the articles exhibited against him, and prevent his giving surety.

In the above case, *Le Blanc* J. adverted to the case of *R.* v. *Bringloe, M.* 7. *G.* 2. *temp. Ld. Hardwicke,* in which it was refused the defendant to controvert the facts, but explanation was allowed of such parts of the articles as were ambiguous. 13 *East,* 174. *notis.*

§ V. How the Peace-Warrant may be superseded.

It is said, that if one who fears that the surety of the peace will be demanded against him, find sureties before any justice of the same county, either before or after a warrant is issued against him, he may have a *supersedeas* from such justice, which shall discharge him from arrest from any other justice at the suit of the same party, for whose security he has given such surety. 1 *Haw. c.* 60. § 14. Finding sureties before arrest.

In which *supersedeas* it is not necessary to name either the sureties or the sums in which they are bound: but yet it is the better form to express them both. *Dalt. c.* 118. p. 274.

Also, it is said, that an appearance upon a recognisance for the peace may be superseded, by finding sureties in the chancery or K. B. and purchasing a writ testifying the same; but this practice having been often abused, it is enacted by stat. 21 *J.* 1. *c.* 8. that no writs of *supersedeas* shall be granted out of the chancery or K. B., but upon motion in open court, and on such sufficient sureties as shall appear on oath to the court, to be assessed in the subsidy book at 5*l.* lands, or 10*l.* in goods; and unless it shall also first appear to the court, that the process of the peace or good behaviour is prosecuted against him, desiring such *supersedeas bond* Supersedeas in the chancery or K. B. 21 J. 1. c. 8.

fide, by some party grieved in that court out of which the *supersedeas* is desired to be awarded. 1 *Haw. c.* 60. § 14.

§ VI. How the Peace-Warrant shall be executed.

By whom to be executed.

It can be executed only by the persons to whom it is directed, or some of them, unless it be directed to the sheriff, who may either by parole or by precept in writing, authorise an officer sworn and known to serve it, but cannot empower any other person without a precept in writing. 1 *Haw. c.* 60. § 11.

Breaking open doors.

Where a person authorised to arrest another who is sheltered in a house is denied quietly to enter it in order to take him, it seems generally to be agreed that he may justify breaking open the doors (among other instances there stated) upon a *capias* from the K. B. or chancery, to compel a man to find sureties for the peace or good behaviour, or even upon a warrant from a justice of the peace for such purpose. 2 *Haw. c.* 14. § 2.

But no one can justify the breaking open another's doors to make an arrest, unless he first signify to those in the house the cause of his coming, and request them to give him admittance. 2 *Haw. c.* 14. § 1. See tit. House, Vol. II.

What justice to be carried before.

If the warrant specially direct that the party shall be brought before the justice who made it, the officer ought not to carry him before any other; but if the warrant be general, to bring him before any justice of such place, the officer has the election to bring him before what justice he pleaseth, and may carry him to prison for refusing to find surety before such justice. 1 *Haw. c.* 60. § 13.

Supersedeas by a justice of peace.

And if the party be carried before another justice, and not before him who issued the warrant, such other justice must take the surety, and bind him by recognisance in all points as the form of the precept doth require; and thereupon such other justice having so taken surety of the peace may and ought, upon request, to make his *supersedeas* to all officers, and to all other justices of the same county; and thereby the said party shall be discharged from finding other surety, and from any other arrest from the same cause: but by such *supersedeas*, the other justice cannot discharge the warrant of the first justice, until the party be bound indeed; nor give any other day to the party to appear. *Dalt. c.* 118. p. 274.

Whether he may be carried to prison without any further warrant.

If the warrant be in the common form, directing the officer to cause the party complained of to come before some justice to find sufficient surety, and if he shall refuse so to do, to convey him immediately to prison, without expecting any further warrant, until he shall willingly do the same, the officer who serves it, before he makes any arrest, ought first to require the party to go with him, and find sureties according to the purport of the warrant; but upon refusal to do either, he may carry him to the gaol by force of the same warrant without more. 1 *Haw. c.* 60. § 12. *Dalt. c.* 118. p. 273.

And yet the constable, or officer, may bring him, in that case, before the justice; and if he refuse there to give sureties, he may commit him without further warrant or *mittimus*. 2 *Hale*, 112.

Nevertheless, notwithstanding these great authorities, it may not be convenient for the justices to leave so much to the constable's

judgment, as to determine what shall or shall not be deemed a refusal to find such sureties; for that the constable is constituted a judge in such case by no law. And much less doth it seem advisable to require in the warrant, as is usual, that the constable shall carry the party to gaol, if he shall refuse to find *sufficient* sureties; it doth not appear how the constable can any way be deemed a competent judge of that; for it is certain that he cannot administer an oath to such sureties, or others, whereby to inform himself of such sufficiency.

[And it is the best way, and now the usual practice, to direct the constable, in the first instance, to take the party before the justice, who in case of refusal or neglect to find sureties commits him to prison.]

Insufficient sureties. If the justice was deceived in the sufficiency of the sureties, he or any other justice may afterwards compel the party to find and put in other sufficient sureties, and may take a new recognisance for the same. *Dalt. c.* 119. p. 278.

Sureties dying. If the sureties die, the party principal shall not be compelled to find new sureties, *Dalt. c.* 119., because their executors and administrators are liable.

Breaking of the bond. But if a man that was bound to keep the peace hath broken his bond, the justices ought of discretion to bind him anew. *Lamb.* 78.

But not until he be thereof convicted by due course of law; for before conviction he standeth indifferent whether he hath forfeited his recognisance or not. *Cromp.* 125.

§ VII. What ought to be the Form of a Recognisance for the Peace.

As to the point what ought to be the form of such a recognisance, if it be taken in pursuance of a writ of *supplicavit*, it may be wholly governed by the direction of such writ: but if it be taken before a justice, upon a complaint below, it seems, that it may be regulated by the discretion of such justice, both as to the number and sufficiency of the sureties and the largeness of the sum, and the continuance of the time for which the party shall be bound. And it hath been said that a recognisance to keep the peace as to any person, for a year, or for life, or without expressing any certain time (in which case it shall be intended for life), or without fixing any time or place for the party's appearance, or without binding him to keep the peace against all the king's people in general, is good. 1 *Haw. c.* 60. § 15. See the form, *post*, p. 322.

However, it seems to be the safest way to bind the party to appear at the next sessions of the peace, and in the mean time to keep the peace as to the king and all his liege people, especially as to the party, according to the common form of precedents. 1 *Haw. c.* 60. § 16.

But notwithstanding this authority, in a recent case, it has been determined by the court of K. B. that a justice of the peace is authorised to require surety of the peace for a limited period, (*e. g.* two years,) according to his discretion, and that he need not bind the party over to the next sessions only. *Willes* v. *Bridger*, 2 *B. & A.* 278. *Vide* Vol. III. tit. Justices of Peace, p. 139.

But if a recognisance to appear at the sessions be taken and an order of court for finding sureties applied for, articles of the peace must be exhibited. The practice referred to in a former edition of this work, if any such still prevail, of calling on the party at the sessions at which he is bound to appear to find sureties to the following sessions, *and so on, from sessions to sessions, without any fresh complaint*, is conceived to be incorrect. In *R.* v. *Bowes*, *E.* 27 *G.* 3. *B. R.* 1 *T. R.* 696., where Lady *Strathmore* had exhibited articles of the peace against the defendant (her husband), the court of K. B. ordered him to give security for 14 years, (it being a case of great outrage, and articles of the peace having been once before exhibited against him on a different complaint,) himself in 10,000*l.* and two sureties in 5000*l.* each. The defendant afterwards applied to the court to reduce the time to one year instead of fourteen, and also to diminish the sum; and in the course of the argument in support of the rule, the defendant's counsel suggested that the court might take bail for one year at first, and afterwards renew that from year to year, if they should see occasion, without any fresh facts being exhibited against him. But though the court, on the particular circumstances of the case, ordered the time to be reduced to two years, because an information then depending for the outrage complained of would be disposed of within that time, when the court might deal with the defendant as they thought proper, in the event of his being convicted, Mr. J. *Ashhurst*, in answer to the suggestion at the bar, that new bail might be required of the defendant at the end of the first year on the original complaint, said, "I very much doubt whether we have such a power. It has been admitted that there never was any instance of the kind; and I confess I should be very loath to establish such a precedent."

§ VIII. How such Recognisance shall be certified.

How to be certified.

If it be taken by force of a writ of *supplicavit*, it needs not be certified till the justice receive a writ of *certiorari* to that purpose. But if it be taken upon a complaint below, it must be certified, sent, or brought to the next sessions, by force of stat. 3 *H.* 7. *c.* 1. that the party so bound may be called. 1 *Haw. c.* 60. § 18.

§ IX. How such Recognisance may be forfeited.

What is deemed no forfeiture.

There are divers things which may be done against the peace, and divers offences for which an indictment against the peace will lie, and yet the committing or doing such offence or act shall be no forfeiture of the recognisance for the peace; for that the act that shall cause a forfeiture of such recognisance must be done or intended unto the *person* as is aforesaid, or in terror of the people. Therefore to enter into lands, where he ought to bring his action; or to disseise another of his lands; or to enter into lands or tenements with force, being without offer of violence to any man's person, and without public terror; or to do a trespass in another man's corn or grass; or to take away another man's goods wrongfully, so it be not from his person; or to steal

another man's horse, or other goods feloniously, being not from his person; all these, and the like, are breaches of the peace, and yet these will make no breach of this recognisance, nor breach of the peace within the meaning of the commission of the peace. *Dalt. c.* 121.

But the recognisance is forfeited, if the party make default of appearance, and the same default shall be recorded. 3 *H.* 7. *c.* 1. What shall be a forfeiture.

However, if the party have any excuse for his not appearing, it seems that the sessions are not bound peremptorily to record his default, but may equitably consider of the reasonableness of such excuse. 1 *Haw. c.* 60. § 18.

And Mr. *Dalton* says, in case of the sickness of the party, so that he cannot appear, he has known that the justices, upon due proof thereof, have forborne to certify or record such forfeiture or default; and that they have taken sureties for the peace of some friends of his present in court, until the next sessions; for that the principal intent of the recognisance was but the preservation of the peace. But he queries how this is warrantable by their oath. *Dalt. c.* 120. p. 278. Case of sickness.

Also, there is no doubt but that it may be forfeited by any actual violence to the person of another, whether it be done by the party himself, or by others through his procurement; as manslaughter, rape, robbery, unlawful imprisonment, and the like. 1 *Haw. c.* 60. § 20. Actual violenc

Also, it hath been holden, that it may be forfeited by any treason against the king's person, and also by any unlawful assembly *in terrorem populi,* and even by words directly tending to a breach of the peace, as by challenging one to fight, or in his presence threatening to beat him. 1 *Haw. c.* 60. § 21. Threatening words.

Otherwise it is if the party be absent; and yet if the party so bound shall threaten to kill or beat a person who is absent, and after shall lie in wait for him to kill or beat him, this is a forfeiture of the recognisance. *Dalt. c.* 121. p. 280.

However, it seems that it shall not be forfeited by bare words of heat and choler, as calling a man a knave, teller of lies, rascal, or drunkard: for though such words may provoke a choleric man to break the peace, yet they do not directly challenge him to it, nor does it appear that the speaker designed to carry his resentment any farther: and it hath been said that even a recognisance for the good behaviour shall not be forfeited for such words; from whence it follows *à fortiori,* that a recognisance for the peace shall not. 1 *Haw. c.* 60. § 22.

Also, there are some actual assaults on the person of another, which do not amount to a forfeiture of such recognisance; as if an officer, having a warrant against one who will not suffer himself to be arrested, beat or wound him in the attempt to take him; or if a parent in a reasonable manner chastise his child; or a master his servant, being actually in his service at the time; or a schoolmaster his scholar; or a gaoler his prisoner; or even a husband his wife, as some say; or if one confine a friend who is mad, and bind and beat him, in such a manner as is proper in such circumstances; or if a man force a sword from one who offers to kill another therewith; or if a man gently lay his hands upon another, and thereby stay him from inciting a dog against a third person; or if a man beat another (without wounding him, or throwing at An actual assault in some cases does not amount to a forfeiture.

him a dangerous weapon,) who wrongfully endeavours with violence to dispossess him of his lands or goods, or the goods of another delivered to him to be kept, and will not desist upon his laying his hands gently on him, and disturbing him; or if a man beat, or (as some say) wound or maim one who makes an assault upon his person or that of his wife, parent, child, or master, especially if it appear that he did all he could to avoid fighting before he gave the wound; or if a man fight with or beat one who attempts to kill any stranger; or if a man even threaten to kill one who puts him in fear of death, in such a place where he cannot safely fly from him; or if one imprison those whom he sees fighting, till the heat is over. 1 *Haw.* c. 60. § 23. 24.

§ X. How the Recognisance being forfeited shall be proceeded on.

It is said, that the sessions cannot in any case proceed against the party for a forfeiture of his recognisance, either in respect of his not appearing, or breaking the peace; but that the recognisance itself, with the record of default of appearance, ought to be removed into some of the courts at *Westminster*, who shall proceed by *scire facias* upon such recognisance. 1 *Haw.* c. 60. § 18.

§ XI. How such Recognisance may be discharged.

Discharged on appearance.

He who is bound to the peace, and to appear at a certain day, must appear at that day and record his appearance, although he who craved the peace cometh not to desire that it may be continued; otherwise the recognisance cannot be discharged. *Dalt.* c. 120. p. 278.

If the recognisance be made to keep the peace generally, without any time or day limited, it shall be construed to be during the party's life; and this the justice may do upon reasonable cause: but if such surety be so taken during the offender's life, neither the king, nor the justice, nor the party, can release or discharge it: and therefore the justice must be well advised, how he granteth such surety. *Dalt.* c. 119. p. 276.

By the death of the king.

But it seems to be agreed, that it may be discharged by the death or demise of the king in whose reign it was taken, or of the principal party who was bound thereby, if it were not forfeited before. 1 *Haw.* c. 60. § 17.

Or the release of the party.

Also it hath been holden, that it may be discharged by the release of the party at whose complaint it was taken, being certified together with it; but this may justly be questioned, because the recognisance is not to the subject but to the king, and consequently cannot be discharged by the subject, who is not a party to it: however, such a release will be a good inducement to the court, to which such a recognisance shall be certified, to discharge it. And so will the non-appearance of the party at whose complaint it was taken, in order to pray the continuance of it, and yet it is said that the sessions in that case may in their discretion refuse to discharge it. However, it is certain that such a recognisance cannot be pardoned or released by the king before it is

broken, because the subject has a kind of interest in it. And it is said that the sureties are not discharged by their death, but that their executors continue to be bound as their testators were. 1 *Haw.* c. 60. § 17.

And if a man be bound to keep the peace towards the king and all his people, but not towards any person certain, and to appear at such a sessions, the court at that sessions may make proclamation, that if any man can show cause why the peace granted against such a one shall be continued, he shall speak; and if no person cometh to demand the peace against him, or to show cause why it should be continued, then the court may discharge him. But if a man be bound as aforesaid, and *especially to keep the peace towards a certain person*, there, though such person cometh not to desire the peace may be continued, yet the court by their discretion may bind him over till the next sessions, and that may be to keep the peace against that person only, if they shall think good; for it may be that the person who first craved the peace is sick, or otherwise letted, so as he cannot come to that sessions to demand the continuance of the peace further. *Dalt.* c. 120. p. 278. May be discharged or continued by the sessions.

Likewise, if the party be imprisoned for default of sureties, and after he that demandeth the peace against him happen to die, it seemeth the justice may make his *liberate* or warrant for the delivery of such prisoner; for after such death, there seemeth no cause to continue the other in prison. Also, any justice may, upon the offer of such prisoner, take surety of him for the peace, and may thereupon deliver him. *Dalt.* c. 118. p. 274. He that demandeth sureties dying.

Surety for the Good Behaviour.

A MAN may be compelled to find sureties both for the good behaviour and for the peace; and yet the good behaviour includeth the peace: and he that is bound to the good behaviour is therein also bound to the peace. *Dalt.* c. 122. p. 286. Good behaviour includeth the peace.

This surety for the good behaviour being of near affinity to surety for the peace, both as to the manner in which it is to be taken, superseded, and discharged, it seemeth not to require a particular consideration, save only as to these two points;

§ I. *For what Misbehaviour it is to be required.*

II. *For what it shall be forfeited.*

§ I. For what Misbehaviour it is to be required.

It doth not appear that the conservators of the peace at common law had any power as touching the *good behaviour*, further than as it had a relation to the *peace*; and not as it is contradistinguished from it. And it seemeth that the power which the justices of the peace do exercise at this day, in relation thereto, doth solely depend upon the commission of the peace, and the

statute of the 34 *Ed.* 3. *c.* 1. (Except in some special instances wherein the power of binding to the good behaviour is given to them by particular statutes, which pertain not to this general title.)

Power given to justices by the commission.

The words in the commission are these: *We have assigned you jointly and severally, and every one of you, our justices, to keep our peace, and to cause to come before you, or any one of you, all those who to any one or more of our people concerning their bodies, or the firing their houses, have used threats; to find sufficient security for the peace or their good behaviour towards us and our people; and if they shall refuse to find such security, then them in our prisons, until they shall find such security, to cause to be safely kept.*

34 Ed. 3. c. 1. Power given by statute.

Stat. 34 *Ed.* 3. *c.* 1. as to this matter runs thus: *In every county shall be assigned for the keeping of the peace one lord, and with him three or four of the most worthy in the county, with some learned in the law; and they shall have power to restrain the offenders, rioters, and all other barators, and to pursue, arrest, take, and chastise them according to their trespass or offence; and to cause them to be imprisoned and duly punished according to the law and customs of the realm, and according to that which to them shall seem best to do by their discretions and good advisement; and also to inform them, and to enquire of all those that have been pillors and robbers in the parts beyond the sea, and be now come again, and go wandering, and will not labour as they were wont in times past; and to take and arrest all those that they may find, by indictment, or by suspicion, and to put them in prison; and to take of all them that be not of good fame, where they shall be found, sufficient surety and mainprise of their good behaviour towards the king and his people, and the other duly to punish, to the intent that the people be not by such rioters or rebels troubled nor endangered, nor the peace blemished, nor merchants nor others passing by the highways of the realm disturbed, nor put in the peril which may happen of such offenders.*

This statute seems to have had in view chiefly the disorders to which the country was then liable, from great numbers of disbanded soldiers, who having served abroad in the wars of that victorious king, were grown strangers to industry, and were rather inclined to live upon rapine and spoil. *Barl.* 524.

But whatever the natural and obvious sense of it may be when compared with the history and circumstances of those times, it is certain that it hath been carried much farther by construction, and the purport of it hath been extended by degrees, until at length there is scarcely any other statute which hath received such a largeness of interpretation.

Observations of learned men on the subject.

And that I may proceed with clearness in a matter so essential to the office of a justice of the peace, I will set down the several expositions which have been given of this statute from time to time by learned men, and then raise such observations thereupon as the subject will naturally suggest.

The first unfolding of the sense of this statute which has occurred, was in the case of Sir *Richard Croftes* and Sir *Richard Corbet*, in the second year of the reign of king *H.* 7. wherein it was resolved by all the judges for that purpose assembled, that he who is bound to the good behaviour ought not to do any thing which shall be cause of breach of the peace, or to put the people in fear,

dread, or trouble; and so shall be intended of all things which concern the peace: but not in misdoing of other things which touch not the peace. Yet a diversity was observed, between a breach of the peace and a breach of the good behaviour, for the peace is not broken without an affray or battery, but the good behaviour may be forfeited by the number of people a man has, and by their harness, or weapons, and the like, although they break not the peace. 2 *H.* 7. 2. *Cromp.* 121.

The second instance, and upon which much stress hath been laid, was in the 13th year of the same king. In trespass of assault, battery, and imprisonment at *D.*, the defendant saith that one *Alice B.* had a house in the same town, and kept there suspicious people, to wit, of common bawdry, and that the plaintiff oftentimes resorted to the same house suspiciously with women of bad fame and name, whereby the constable of the same town required the defendant to aid him to arrest the plaintiff, to find surety of his good behaviour; whereby the defendant came with the said constable at the hour of twelve in the night, and him found suspiciously in the same place; whereupon he took him and put him in ward; and it was holden by all the justices to be a good justification; for they said, that it is lawful for every constable to take suspected persons, which wake in the night and sleep in the day, or that keep suspicious company. 13 *H.* 7. 10. *Cromp.* 126.

In the next place, Sir *Anthony Fitzherbert*, who lived in the reign of king *H.* 8., saith, that it seemeth that one justice may, by the commission, issue a warrant against a person to find surety of the good behaviour, by his discretion, as well as two justices may; and the words of the statute of the 34 *Ed.* 3. are to the same effect; otherwise, he says, damage may happen to some of the king's subjects, if the party be not attached, before that two justices have made the precept; yet (he says) the common usage is, to make such precept of the good behaviour in the name of two justices, and it is good to observe this direction. *Fitz.* 7. *Crom.* 122.

In the next place, it is proper to take notice of a case adjudged in the court of K. B. in the 30th of queen *Eliz.*, reported by Ld. *Coke*, 4 *Inst.* 181., which was thus; at the sessions at *Bridgewater*, in the county of *Somerset*, one *William King* with sureties was bound by recognisance to appear at the next general sessions of the peace in the same county, and in the mean time to be of the good behaviour towards the queen and all her people. And after, at the next sessions, *William King* appeared, and was indicted for slanderous words spoken since his binding, to wit, for saying at one time to *Edward Kyrton*, esquire, *Thou art a pelter, thou art a liar, and hast told my lord lies.* And he was further indicted, that since the said recognisance, *the close of one* John Wick *with force and arms he broke and entered, and the cattle of the said* John *depasturing in the said close unlawfully vexed and chased.* And afterwards, at another time, he said to the said *Kyrton, Thou art a drunken knave.* Which indictment was removed into the K. B. And hereupon it was debated divers times, both at the bar and the bench, whether admitting all that is contained in the indictment to be true, any thing therein was, in judgment of law, a breach of the said recognisance. And it was resolved, that neither any of the words, nor the tresspass,

were any breach of the good behaviour, for that none of them did tend immediately to the breach of the peace; for though the said words, *Thou art a liar*, *Thou art a drunken knave*, are provocations, yet they tend not immediately to the breach of the peace; as if *William King* had challenged *Kyrton* to fight with him, or had threatened to beat or wound him, or the like; these tend immediately to the breach of the peace, and are therefore breaches of the recognisance of the good behaviour. And this diversity (Ld. *Coke* says) was justly collected upon the coherence and context of the statute of the 34 *Ed.* 3., whereby justices are assigned for keeping of the peace, and to restrain the offenders, rioters, and all other barators, and to chastise them according to their trespass and offence; and to enquire of pillors and robbers in the parts beyond the seas, and be now come again, and go wandering and will not labour. And thus much for the punishment of offences against the peace after they be done. Then followeth an express authority given to justices, for prevention of such offences before they be done, namely, *and take off all them that be not of good fame*, (that is, that be defamed and justly suspected that they intend to break the peace,) *where they shall be found, sufficient surety and mainprise of their good behaviour towards the king and his people*, (which must concern the king's peace, as is also provided by the words subsequent,) *to the intent that the people be not by such rioters troubled or endamaged, nor the peace blemished, nor merchants nor others passing by the highways disturbed, nor put in peril that may happen of such offenders.* And as for the trespass; although every wrongful trespass is by force and arms, and against the peace, yet these are not taken to be such as shall make a breach of the good behaviour.

After this, Mr. *Lambard*, who wrote towards the beginning of the reign of king *James* the first, saith thus: Surety of the good abearing is of great affinity with that of the peace, as being provided for preservation of the peace, as that other is; for in the commission of the peace they are both conveyed under one tract of speech, against such as threaten to hurt men's bodies, or fire their houses; which things (he says) are now commonly prevented by surety of the peace only. *Lamb.* 115.

And in the 2 *H.* 7. 2. (above recited) the surety of the good abearing is set forth to rest in this point chiefly, that a man do nothing that may be cause of a breach of the peace; and that it doth not consist in the observation of things that concern not the peace; and that it should differ from surety of the peace in this, that where the peace is not broken without an affray, or battery, or such like, the surety may be broken by the number of a man's company, or by his or their weapons or harness.

And herewithal (he says) do also agree certain precedents in the K. B.

But all this notwithstanding, he thinks that a man may reasonably affirm, that the surety of good abearing should not be restrained to so narrow bounds.

In proof of which, he proceeds to comment on the above-mentioned statute of the 34 *Ed.* 3. enabling the keepers of the peace *to take of them all that be not of good fame, where they shall be found, sufficient surety and mainprise of their good abearing towards the king and his people;* so that if a man be defamed, he may, by

virtue hereof, be bound to his good behaviour at the discretion of the justices. Now the doubt resteth in this; to understand concerning what matters this defamation must be: and this (he thinks) may be partly gathered out of the said statute; for after it hath first given power to the wardens of the peace to arrest and chastise offenders, (that is to say, against the peace, rioters and barators,) then it willeth them to *enquire of such as having been robbers beyond the sea were come over hither, and would not labour as they were wont;* and, lastly, it authoriseth them *to take surety of the good behaviour of such as be defamed,* namely, for any of those former offences; for so it standeth well together that they should both punish such as have already so offended, and shall also provide that others shall not likewise offend. *Lamb.* 117.

But he says, the further this bond of the good abearing doth extend, the more regard there ought to be taken in the awarding of it; and therefore (says he) although the justices have power to grant it, either by their own discretion or upon the complaint of others, even as they may that of the peace, yet I wish rather that they do not command it but only upon sufficient cause seen to themselves, or upon the complaint of other very honest and credible persons.

And then being about to set forth the form of a warrant, and of a recognisance for the good behaviour, he says, And, here forasmuch as one justice alone, and out of sessions, may both by the first clause of the commission, and also by the opinion of *Fitzherbert,* grant this surety of the good abearing, (although the common practice be, that two such justices do join in that doing, whereof also *Fitzherbert* hath very good liking,) I will not stick to set forth the common forms, as well of the precept as of the recognisance for the same, wherein if I shall use the names of two justices, you must take that to be done according to the common fashion, and not of any necessity in law. For as I would more gladly use the assistance of a fellow-justice in this behalf, if I may conveniently have it, so if that may not be gotten, I would not greatly fear, when good cause shall require, to undertake the thing myself alone. *Lamb.* 120.

And besides this, he says, you may see admitted by the opinion of the court, 13 *H.* 7., that if a man in the night season haunt a house that is suspected for bawdry, or use suspicious company, then may the constable arrest him to find surety for his good abearing; for bawdry is not merely a spiritual offence, but mixed and sounding somewhat against the peace of the land.

And therefore, says he, it shall not be amiss at this day, in my slender opinion, to grant surety of the good abearing against him that is suspected to have begotten a bastard child, to the end that he may be forthcoming when it shall be born; for otherwise there will be no putative father found, when the justices shall after the birth come to take order for his punishment. *Lamb.* 119.

In the next place, Mr. *Pulton,* who lived about the same time with Mr. *Lambard,* writeth thus: The surety of the good abearing is ordained for the preservation of the peace, and it doth differ in nothing from that of the peace, but that there is more difficulty in the performance of it, and the party bound may sooner slide into the peril and danger of it. The surety of good abearing

is most commonly granted in open sessions, or by two or three justices; or, upon a *supplicavit*, and great cause shown and proved, it is granted in the chancery or K. B. And though one justice alone may grant it if he will, yet it is seldom done so, unless it be to prevent some great, sudden, and imminent enormity or danger. The surety of the peace is most times taken at the request of one for the preservation of the peace chiefly against one. But the surety for the good abearing is oftentimes granted at the suit of divers, and those must be men of credit, and to provide for the safety of many; for the effect and purport thereof is that the party bound shall demean himself well in his port, behaviour, and company, and do nothing that may be the cause of breach of the peace, or in putting the people in fear or trouble; and it is chiefly granted against common barrators, common rioters, common quarrellers, common peace-breakers, and persons greatly defamed for resorting to houses suspected to maintain incontinency or adultery, and against those that be generally feared to be robbers or spoilers of the king's people, or which do endamage, disturb, trouble, or put in peril passengers by the way. *Pult.* 18.

Afterwards, Mr. *Dalton*, who wrote towards the latter end of the reign of king *James* the first, says, The surety of good behaviour is of great affinity with that of the peace, and is provided chiefly for the preservation of the peace; and is most commonly granted either in the open sessions, or by two or three justices out of sessions. Yet by the words of the commission, as also by the common opinion of the learned, one justice alone out of sessions may grant this surety of the good behaviour. But this is not usual, unless it be to prevent some great and sudden danger, especially against a man that is of any good estate, carriage, or report. And it shall be good discretion in the justices that they do not grant it, but either upon sufficient cause seen to themselves, or upon the suit or complaint of others, and the same very honest and credible persons. *Dalt.* c. 123. p. 287.

In the next place, Mr. *Hawkins*, who wrote in the reign of king *George* the first, saith thus: There seem to have been some opinions that the statute, speaking of those that be *not of good fame*, means only such as are defamed and justly suspected, that they intend to break the peace, and that it does not any way extend to those who are guilty of other misbehaviours not relating to the peace. But this seems much too narrow a construction; since the above-mentioned expression of persons of *evil fame*, in common understanding, as properly includes persons of scandalous behaviour in other respects, as those who by their quarrelsome behaviour give just suspicion of their readiness to break the peace; and accordingly it seems always to have been the better opinion, that a man may be bound to his good behaviour for many causes of scandal, which give him a bad fame, as being contrary to good manners only; as for haunting bawdy houses with women of bad fame; or for keeping bad women in his own house; or for speaking words of contempt of an inferior magistrate, as a justice of the peace, or mayor, though he be not then in the actual execution of his office; or of an inferior officer of justice, as a constable and such like, being in the actual execution of his office. 1 *Haw.* c. 61. § 2.

However, it seems the better opinion, that no one ought to be bound to the good behaviour for any rash, quarrelsome, or unmannerly words, unless they either directly tend to a breach of the peace, or to scandalise the government, by abusing those who are entrusted by it with the administration of justice, or to deter an officer from doing his duty; and therefore it seems that he who barely calls another rogue or rascal, or teller of lies, or drunkard, ought not for such cause to be bound to the good behaviour. 1 *Haw.* c. 61. § 3.

However, says he, I cannot find any certain precise rules for the direction of the magistrate in this respect; and therefore am inclined to think, that he has a discretionary power to take such surety of all those whom he shall have just cause to suspect to be dangerous, quarrelsome, or scandalous; as of those who sleep in the day, and go abroad in the night; and of such as keep suspicious company; and of such as are generally suspected to be robbers, and the like; and of eves-droppers; and common drunkards; and all other persons, whose misbehaviour may reasonably be intended to bring them within the meaning of the statute, as persons of evil fame, who being described by an expression of so great latitude, seem in a great measure to be left to the judgment of the magistrate. But if he commit one for want of sureties, he must show the cause with convenient certainty. 1 *Haw.* c. 61. § 4.

And thus the sense of the statute hath been extended not only to offences immediately relating to the peace, but to divers misbehaviours not directly tending to a breach of the peace; insomuch as it is become difficult to define how far it shall extend, and where it shall stop.

Against whom sureties of the good behaviour may be granted.

Mr. *Dalton*, in order to determine the same with some kind of certainty, hath (notwithstanding his opinion as above mentioned) inserted a number of instances, wherein sureties of the good behaviour may be granted; and they are these that follow:

(1) Against rioters.

(2) Barators.

(3) Common quarrellers and common breakers of the peace.

(4) Such as lie in wait to rob, or shall be suspected to lie in wait to rob, or shall assault, or attempt to rob another, or shall put passengers in fear or peril, or shall be generally suspected to be robbers by the highway.

(5) Such as are like to commit murder, homicide, or other grievances, to any of the king's subjects in their bodies.

(6) Such as shall practise to poison another; one instance of which may be the poisoning of their food. Thus Mr. *Dalton* granted the good behaviour against one who had bought ratsbane, and mingled it with corn, and then cast it among his neighbour's fowls, whereby most of them died.

(7) Such as in the presence and hearing of the justice shall misbehave themselves in some outrageous manner of force or fraud.

(8) Such as are greatly defamed for resorting to houses suspected to maintain adultery or incontinency.

(9) Maintainers of houses commonly suspected to be houses of common bawdry.

(10) Common whoremongers and common whores; for bawdry is an offence temporal as well as spiritual, and is against the peace of the land.

(11) Night-walkers and eves-droppers. See Vol. I.

(12) Suspected persons, who live idly, and yet fare well, or are well-apparelled, having nothing whereon to live; unless upon examination they shall give a good account of such their living.

(13) Common gamesters, especially if they have not whereon to live.

(14) Such as raise hue and cry without cause.

(15) Libellers.

(16) Putative father of a bastard child.

(17) Such as persuade or procure the putative father to run away, or the mother to be conveyed away, whereby she leaveth her child to the charge of the town.

(18) Such as abuse a justice's warrant, or shall abuse him or the constable in executing their offices. Nay, it seemeth, he says, that he who shall use words of contempt, or contrary to good manners, against a justice of the peace, though it be not at such a time as he is executing his office, yet he shall be bound to his good behaviour.

(19) Such as charge another before a justice with felony, riot, or forcible entry, and yet will not prosecute or give evidence.

(20) In general, whatsoever act or thing is of itself a misbehaviour, is cause sufficient to bind such an offender to the good behaviour. *Dalt. c.* 124.

To which others have added other instances; as,

(21) Forcible entry. 1 *Haw. c.* 64. § 8.

(22) Mr. *Hawkins* says, that he hath heard it agreed in the court of K. B., that a writing full of obscene ribaldry, without any kind of reflection upon any one, is not punishable at all by any prosecution at common law; yet it seems, he says, that the author may be bound to his good behaviour, as a scandalous person of evil fame. 1 *Haw. c.* 73. § 9.

(23) A man did beat a woman in *Westminster-hall*, and he was bound to the good behaviour; and so, says Mr. *Crompton*, he may be bound to the peace and good behaviour, where he striketh a person in the presence of the justices in sessions. *Cromp.* 124.

(24) A man was bound to the good behaviour by the court of K. B. for assaulting and threatening a person so that he could not attend the court in suit there, without great cost. And so it seemeth that it may be done where one cometh to the sessions about a traverse to be tried there, or to prefer a bill of indictment, if he be assaulted or threatened. *Cromp.* 125.

Observations by Dr. Burn. I have omitted to make any remarks in the progress of these authorities, being willing to exhibit them together in one view; I proceed now to take notice of such observations as do occur upon the whole.

First, It appears from hence, that the universal practice of one justice binding to the good behaviour is but of a modern date; although the law for it is the same now that it was near 400 years ago; and that it was a long time doubted whether one justice alone could require sureties of the good behaviour. But here a distinction ought to be made between the power given by the commission of the peace and the power given by the above-mentioned

statute: as to the commission, there seemeth to be no foundation for any doubt, but that thereby one justice alone may require such sureties; for the words are express, *We have assigned you, jointly and severally, and every one of you:* but then that extends only to two instances, namely, to *the threatening of a person concerning his body, or the firing of his house.* As to the statute, the doubt seems to have arisen upon this; in that having appointed who shall be assigned for justices, it then directeth that *they shall have power to restrain offenders;* and it is holden, Mr. *Lambard* hath observed, that if no power be expressly given by any statute to any one justice alone, he cannot otherwise compel the observation thereof, than by the help of his fellow-justices. And Mr. *Hawkins*, speaking hereof in the case of riots, says, that if one justice alone, proceeding upon this statute, shall arrest *an innocent person* as a rioter, it seemeth that he is liable to an action of trespass, and that the party arrested may justify the rescuing of himself; because no one single justice is by this statute made a judge of the said offence: yet, nevertheless, he says, by a favourable construction which this statute hath received for the advancement of justice, it hath been resolved, that any one justice upon this statute, *if he find the persons riotously assembled*, may, without staying for his companions, arrest the offenders, and bind them to their good behaviour.

Secondly, It seemeth, from what hath been rehearsed, that the words, *not of good fame*, were generally understood for a long time to refer to such offences only as have a relation to the peace, and not to other things which concern not the peace.

Thirdly, That one great inlet to the larger and at length almost unlimited interpretation of the words, was the case above mentioned, 13 *H.* 7., wherein it was adjudged to be lawful to arrest a man for the good behaviour, for frequenting a suspected bawdy house, with women of bad fame. And this is the reason which Mr. *Dalton* gives for many of his instances above specified, namely, that they are more properly against the peace, than this same case of avoutry. *Dalt. c.* 124. p. 289.

Fourthly, That when once the gap was opened for the admission of other offences not immediately relating to the peace, they flowed in and multiplied. Thus in the case of bastardy, having some affinity with the other, of frequenting bawdy houses, Mr. *Lambard* thought that with equal reason the reputed father of a bastard child might be bound to the good behaviour; and in a few years after Mr. *Dalton* delivers it absolutely, that he may be so bound.

Fifthly, That, therefore the natural and received sense of any statute ought not to be departed from without extreme necessity; for that one concession will make way for another, and the latter will plead for the same right of admission as the former.

Sixthly, That, notwithstanding the aforesaid instances given by Mr. *Dalton* and others, it may not be safe in all cases to rely upon every one of them without distinction; not only because it is almost impossible for any two cases to be exactly alike in all their circumstances, but also because in fact divers of them at different times have been adjudged otherwise, and others have not prevailed without much difficulty and contradiction in the courts

above, and perhaps were at length admitted rather from the conveniency and reasonableness of the thing itself, and from an indulgence usually allowed to those gentlemen who serve their country without gain, and oftentimes with much trouble, than from any clear, positive, and express power given to them by the commission, or by the said statute.

Seventhly, That, notwithstanding all which hath been said, perhaps the case before recited, concerning the frequenting of a suspected bawdy-house, will not support the weight which so many authors have laid upon it. For the question, whether a justice of the peace had cognisance of the offence by virtue of the commission of the peace, or of the statute of the 34 *Ed.* 3. was no part of the dispute; for it was an arrest by the constable *ex officio*, as a conservator of the peace at common law, and without any warrant from a magistrate: and the question was not, whether the constable might require sureties for the good behaviour, as a thing different from sureties for the peace, but whether in that case he could arrest at all or not.

And if the authority of this case shall be abated, several of the above-mentioned instances will abate in proportion.

Eighthly, It is to be observed, that others of the above-said instances were established upon matters originally determined in the court of K. B., and Mr. *Crompton* himself refers to the authority and practice of that court in several instances. *Cromp.* 120. But it doth by no means follow, from what the justices of the court of K. B. may do, that the justices of the peace may do the like; for their authority is circumscribed and limited by their commission and the statute law.

Ninthly, That it will perhaps abate some other of the foregoing instances, if we attend to this consideration; that there is a great difference between what the justices in sessions may do, after a conviction by a jury, for an offence committed, and what a single justice out of the sessions may do, before an offence is committed, and to prevent the same from being committed; or what a single justice may do, upon a summary conviction before him, for an offence, as directed by some special act of parliament. The truth is, binding to the good behaviour was a discretionary judgment at the common law, given by a court of record for an offence at the suit of the king, after a common-law conviction by verdict of twelve men. Trial by his peers is the *Englishman's* birthright by the great charter, and cannot be taken away but by an authority equal to that which established it, that is, by act of parliament; and therefore where an act gives a summary conviction before a justice of the peace, and inflicts a punishment upon such conviction, such statute must be pursued both as to the conviction and punishment. And it seemeth incongruous, that a justice of the peace shall have power to bind a man to the good behaviour, for an offence which he himself hath no power to hear and determine; for that is, in effect, giving judgment, and awarding execution, when it doth not and cannot legally appear to him that the person is guilty.

Great caution recommended. Tenthly, That therefore upon the whole it may be proper to conclude, that the magistrate in this article of the good behaviour cannot exercise too much caution and good advisement; that in

matters which the law hath left indefinite, it is better to fall short of than to exceed his commission and authority; that to bind a man to the good behaviour upon the statute for *evil fame* in general may not always be with safety: not only because upon an action brought it may be hard to prove such evil fame, but also because in fact it is not always true, for many a good man hath been evil spoken of; that although in some cases a justice of the peace may have a *discretionary* power (as Mr. *Hawkins* expresseth it), yet he must remember withal that it is a *legal* discretion, as Mr. *Barlow* terms it, in which in favour of liberty great tenderness is to be used; or, as Lord *Coke* hath defined it, discretion is a knowledge or understanding to discern between truth and falsehood, between right and wrong, between shadows and substance, between equity and colourable glosses and pretences, and not to do according to our wills and private affections; and such discretion ought to be limited and bounded with the rules of reason, law, and justice. 5 *Rep.* 100. 10 *Rep.* 140.

Discretion defined.

§ II. For what it shall be forfeited.

This hath been handled in part as it fell in with the former section; and agreeably to the doctrine there laid down, Mr. *Dalton* says, that he who is bound to the good behaviour ought to demean himself well in his carriage, and in his company, not doing any thing which shall be a cause of breach of the peace, or to put the people in fear, dread, or trouble; and so shall be intended of all things which concern the peace, but not in misdoing of other things which touch not the peace. *Dalt. c.* 122. p. 287.

And Mr. *Hawkins* saith, it hath been laid down as a general rule, that whatever will be a good cause to bind a man to his good behaviour will forfeit a recognisance for it; but that this hath since been denied, and indeed seems by no means to be maintainable, because the statute in ordering persons of evil fame to be bound in this manner seems, in many places, chiefly to regard the prevention of that mischief which they may justly be suspected to be likely to do; and in that respect requires them to secure the public from that danger which may probably be apprehended from their future behaviour, whether any actual crime can be proved upon them or not; and it would be extremely hard in such cases to make persons forfeit their recognisances, who yet may justly be compellable to give one, as those who keep suspicious company, or those who spend much money idly, without having any visible means of getting it honestly, or those who lie under a general suspicion of being rogues, and the like. 1 *Haw. c.* 61. § 5.

However it seems that such a recognisance shall not only be forfeited for such actual breaches of the peace for which a recognisance for the peace may be forfeited, but also for some others, for which such a recognisance cannot be forfeited; as for going armed with great numbers to the terror of the people, or speaking words tending to sedition; and also for all such actual misbehaviours which are intended to be prevented by such a recognisance, but not for barely giving cause of suspicion of what perhaps may never actually happen. 1 *Haw. c.* 61. § 6.

A.

A. Form of Information and Complaint to require Surety of the Peace or Good Behaviour.

County of ——— { The information and complaint of *A. B.* of ———, in the said county of ———, yeoman, taken upon oath before me, one of his majesty's justices of the peace in and for the said county, the ——— day of ———, one thousand eight hundred and twenty ———.

WHO *says, that* C. D. *of* ———, *in the said county, yeoman, did on the* ——— *day of* ——— *now last past, at* ——— *in the said county, threaten to, &c.* [here state the precise threats and words used,] *and that from the above and other threats used by the said* C. D. *towards this complainant, he this complainant is afraid that the said* C. D. *will do him some bodily injury, and therefore prays that the said* C. D. *may be required to find sufficient sureties to keep the peace* [or, *be of good behaviour,* as may be required, see *post*, p. 320.] *towards him this complainant. And the said* A. B. *also says, that he doth not make this complaint against nor require such sureties from the said* C. D. *from any malice or ill will, but merely for the preservation of his person from injury.*

Sworn before me,
G. C. } A. B.

B.

B. Form of Warrant on the above Complaint.

County of ——— } To the constable of ———, in the said county.

WHEREAS A. B. *of* ———, *in the said county, yeoman, hath this day made oath before me, one of his majesty's justices of the peace in and for the said county, that* C. D. *of* ———, *in the said county, yeoman, did, on the* ——— *day of* ——— *last, at* ———, *in the said county, threaten to, &c.* [here pursue the words of the complaint,] *and that from the above and other threats used by the said* C. D. *towards the said* A. B., *he the said* A. B. *is afraid that the said* C. D. *will do him some bodily injury, and therefore the said* A. B. *hath prayed that the said* C. D. *may be required to find sufficient sureties to keep the peace* [or, *be of good behaviour,* as may be required,] *towards him the said* A. B.; *I do therefore hereby require and command you to apprehend and bring the said* C. D. *before me, or some other of his majesty's justices of the peace for the said county, to answer the said complaint, and to find sufficient sureties to keep the peace or be of good behaviour towards his majesty and all his liege people, and especially towards the said* A. B., *for such term as shall be then enjoined him. Given under my hand and seal the* ——— *day of* ———, *one thousand eight hundred and twenty* ———.

G. C. (*L. S.*)

[If the justice intend to bind the party to appear at the sessions, the form of the warrant must be altered thus: " *To find sufficient*

sureties, as well for his appearance at the next general quarter sessions of the peace, to be held for the said county, to answer the said complaint; as also, in the mean time, to keep the peace, [or, *be of good behaviour,* as may be required,] *towards his majesty and all his liege people, and especially towards the said* A. B.]

C. Warrant for the Good Behaviour; on Stat. 34 *Ed.* 3. *c.* 1. from *Lambard* and *Dalton.* C.

County of ——— } J. T. *esquire, and* T. L., *esquire, justices of our lord the king, assigned to keep the peace within the said county; to the sheriff of the said county, to the constable of the hundred of* ———, *in the said county, to the petty constables of the town of* ———, *in the said county, and to all and singular the bailiffs, constables, and other officers of our said lord the king, as well within liberties as without, in the same county, greeting:*

Forasmuch as we are given to understand, by the information, testimony, and complaint of many credible persons, that A. O. *of* ———, *in the county aforesaid, gentleman, and* B. O. *of the same, yeoman, are not of good name and fame, nor of honest conversation, but evil doers, rioters, barators, and disturbers of the peace of our said lord the king, so that murder, homicide, strifes, discords, and other grievances and damages amongst the lieges of our said lord the king concerning their bodies are likely to arise thereby; therefore, on the behalf of our said lord the king, we command you, and every of you, that you omit not by reason of any liberty within the county aforesaid, but that you attach, or one of you do attach, the aforesaid* A. O. *and* B. O., *so that you have them before us or others our fellows, justices of our said lord the king, assigned to keep the peace within the county aforesaid, as soon as they can be taken,* [or, *before the justices of our said lord the king, assigned to keep the peace within the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, at the next general quarter sessions of the peace to be holden in and for the said county,*] *to find then before us* [or, *the said justices*] *sufficient surety and mainprise for their good behaviour towards our said lord the king, and all his people, according to the form of the statute in such case made and provided. And this you shall in nowise omit, on the peril that shall ensue thereon. And have you before us* [or, *before the said justices, at the sessions aforesaid,*] *this precept. Given under our seals at* ———, *in the county aforesaid, the* ——— *day of* ———, *in the* ——— *year of the reign of our said lord* ———.

D. Form of Commitment for Want of Sureties for a limited Period fixed by the Justice. D.

County of ——— } To the constable of ———, in the said county, and also to the keeper of his majesty's gaol for the said county.

WHEREAS [recite the complaint as in the warrant]: *And whereas the said* C. D. *was this day brought before me to answer the said complaint, and I, the said justice, have ordered and*

adjudged, and do hereby order and adjudge, that the said C. D. *shall enter into his own recognisance in the sum of* 50*l.*, *with two sufficient sureties in the sum of* 25*l. each, to keep the peace* [or, *be of good behaviour*, as may be required,] *towards his majesty and all his liege people, and particularly towards the said* A. B., *for the space of twelve calendar months now next ensuing: And insomuch as the said* C. D. *hath refused to enter into such recognisance, and to find such sureties as aforesaid, I do hereby require and command you the said constable forthwith to convey the said* C. D. *to the common gaol of the said county, and to deliver him to the keeper thereof, together with this warrant: And I do also require and command you the said keeper to receive the said* C. D. *into your custody in the said gaol, and him there safely to keep for the space of twelve calendar months, unless he in the mean time enter into such recognisance with such sureties as aforesaid to keep the peace in the manner and for the term above mentioned. Herein fail not. Given under my hand and seal the ——— day of ———, one thousand eight hundred and twenty ——.*

G. C. (*L. S.*)

E. E. Form of Commitment for Want of Sureties to appear at the Sessions.

County of ——— } To the constable of ———, in the said county, and also to the keeper of his majesty's gaol for the said county.

WHEREAS [recite the complaint as in the preceding form of warrant to the constable]: *And whereas the said* C. D. *having been this day brought before me the said justice, to answer the said complaint, and having been required by me to find sufficient sureties, as well for his appearance at the next general quarter sessions of the peace to be held for the said county, to do what shall be then and there enjoined him by the court, as also in the mean time to keep the peace* [or, *be of good behaviour*, as may have been required,] *towards his majesty and all his liege people, and especially towards the said* A. B., *hath refused* [or, *neglected*, as the case may be,] *to find such sureties; I do therefore hereby require and command you the said constable forthwith to convey the said* C. D. *to the common gaol of the said county, and to deliver him to the keeper thereof, together with this warrant: And I do also require and command you, the said keeper, to receive the said* C. D. *into your custody, and him there safely to keep until the next general quarter sessions of the peace to be held for the said county, unless he in the mean time find sufficient sureties as well for his appearance at the said sessions as in the mean time to keep the peace as aforesaid. Given under my hand and seal the ——— day of ———, one thousand eight hundred and twenty ———.*

G. C. (*L. S.*)

F. F. Recognisance for the Peace or Good Behaviour.

County of ——— } *BE it remembered, that on the ——— day of ———, in the ——— year of the reign of our lord* George *the fourth, of the united kingdom of* Great Britain

and Ireland, *king, defender of the faith,* A. O. *of* ———, *in the county aforesaid, yeoman,* A. S. *of the same place, yeoman, and* B. S. *of the same place, yeoman, came before me* Henry Chaytor, *doctor of laws, one of the justices of our said lord the king, assigned to keep the peace within the said county, and acknowledged themselves to owe to our said lord the king, to wit, the said* A. O. *the sum of twenty pounds, and the said* A. S. *the sum of ten pounds, and the said* B. S. *the sum of ten pounds, of good and lawful money of* Great Britain, *to be respectively made and levied of their several goods and chattels, lands and tenements, to the use of our said lord the king, his heirs, and successors, if he, the said* A. O., *shall fail in performing the condition underwritten.*

Acknowledged before me,
Henry Chaytor.

The condition of this recognisance is such that if the above bounden A. O. *shall keep the peace* [or, *be of good behaviour,* as may be required (*a*),] *towards the king, and all his liege people, and especially towards* A. I. *of* ———, *in the said county, yeoman, for the term of twelve calendar months now next ensuing, then the said recognisance shall be void, or else remain in its force.*

[If the justice bind the party to appear at the sessions, the condition of the recognisance must be "*that if the said* C. D. *shall personally appear at the next general quarter sessions of the peace to be holden for the said county, to do and receive what shall be then and there enjoined him by the court, and, in the mean time, shall keep the peace,* [or *be of good behaviour*] *towards his majesty and all his liege people, and especially towards the said* A. B. *Then,* &c."]

G. Liberate to Discharge one committed for Want of Sureties to keep the Peace. G.

County of ——— } To the keeper of his majesty's gaol for the said county.

DISCHARGE out of your custody, the body of A. O. *of* ———, *in the said county, yeoman, he having this day entered into a recognisance before me, one of his majesty's justices of the peace for the said county, in the sum of fifty pounds, with two sureties in twenty-five pounds each, to keep the peace,* [or *be of good behaviour*] *towards his majesty and all his liege people, and especially towards* A. B. *of, &c. yeoman, for the space of twelve calendar months, now next ensuing. Given under my hand and seal the* ——— *day of* ———, *one thousand eight hundred* ———.

(*a*) Mr. Christian, in his Charges to Grand Juries, p.490., says, "Justices can never bind to keep the peace AND *be of good behaviour,* which is inserted in the printed form of recognisance;" and it seems that these latter words cannot be inserted as a matter of course in a recognisance.

H. ## H. The Form of a Supersedeas.

County of ——— } JOHN Robinson, *esquire, one of the justices of our lord the king, assigned to keep the peace within the county aforesaid, to the sheriff, bailiffs, constables, and others the faithful ministers and subjects of our said lord the king within the said county, and to every of them, greeting.*

Forasmuch as A. O. *of* ———, *in the said county, yeoman, hath personally come before me at* ———, *in the said county, and hath found sufficient surety, that is to say,* A. S. *of* ———, *yeoman, and* B. S. *of* ———, *yeoman, either of the which hath undertaken for the said* A. O. *under the pain of* 20*l*., *and he the said* A. O. *hath undertaken for himself under the pain of* 40*l*., *that he the said* A. O. *shall personally appear at the next general quarter sessions of the peace to be holden in and for the said county, then and there to do and receive what shall be injoined him by the said court, and in the mean time shall well and truly keep the peace* [or, *be of the good behaviour*] *towards our said lord the king, and all his liege people, and especially towards* A. I. *of* ———, *yeoman: therefore on the behalf of our said lord the king, I do command you, and every of you, that you utterly forbear, and surcease to arrest, take, imprison, or otherwise by any means for the said cause to molest the said* A. O. *and if you have, for the said occasion, and for none other, taken and imprisoned him the said* A. O. *that then him you deliver, or cause to be delivered, and set at liberty, without further delay. Given at* ——— *aforesaid, in the county aforesaid, under my seal, this* ——— *day of* ———, *in the* ——— *year of the reign of* ———.

I. ## I. Liberate to discharge one committed for Want of Sureties for personal Appearance at Quarter Sessions.

County of ——— } JOSEPH Deane, *esquire, one of the justices of our lord the king, assigned to keep the peace, in the county aforesaid, to the keeper of his majesty's gaol at* ———, *in the said county, greeting.*

Forasmuch as A. O. *in the prison of our said lord the king, in your custody now being, at the suit of* A. I. *of* ———, *in the said county, yeoman, for the want of his finding sufficient sureties for his personal appearance at the next general quarter sessions of the peace, to be holden in and for the said county, and for his keeping the peace,* [or, *being of the good behaviour,*] *in the mean time, towards our said lord the king, and all his liege people, and especially towards the said* A. I., *hath found before me sufficient sureties, to wit,* A. S. *of* ———, *yeoman, and* B. S. *of* ———, *yeoman, either of which hath undertaken for the said* A. O. *under the pain of* 20*l*., *and he the said* A. O. *hath undertaken for himself under the pain of* 40*l*., *that he the said* A. O. *shall and will personally appear at the next general quarter sessions of the peace to be holden in and for the said county, and shall well and truly keep the peace,* [or, *be of the good behaviour,*] *in the mean time, towards our said lord the king, and all his liege people, and especially towards the said* A. I.: *therefore, on the behalf of our said lord the king, I do command you, that if the said* A. O. *do remain in the said gaol, for the said cause, and for none*

other, then you forbear to grieve, or detain him any longer, but that you deliver him thence, and suffer him to go at large, and that upon the pain that will fall thereon. Given under my seal at ———, *in the said county, the* ———, *day of* ——— *in the* ——— *year of the reign of our said lord* George *the fourth, of the united kingdom of* Great Britain *and* Ireland, *king*, &c.

Surgeons. See Physicians. Vol. III.

Swans. See Game. Vol. II.

Swearing.

[19 G. 2. c. 21. — 22 G. 2. c. 33. — 4 G. 4. c. 31.]

BY the canons of the church, if any offend their brethren by swearing, the churchwardens shall present them; and such notorious offenders shall not be admitted to the holy communion, till they be reformed. *Can.* 109. **Punishment in the spiritual court.**

And by stat. 19 *G.* 2. *c.* 21. § 1. it is enacted as follows: **19 G. 2. c. 21.**

If any person shall profanely curse or swear, and be thereof convicted on confession or oath of one witness, before one justice, (or mayor, or chief magistrate of any city or town corporate,) he shall forfeit as follows; that is to say, **Pecuniary penalty.**

Every day-labourer, common soldier, common sailor, or common seaman, 1*s.*

Every other person under the degree of a gentleman, 2*s.*

And every person of or above the degree of a gentleman, 5*s.*

And for a second offence after conviction, double; and for every other offence after a second conviction, treble.

§ 10. Which said penalties shall go to the poor of the parish where the offence was committed.

§ 2. If such person shall curse or swear in the presence and hearing of a justice (or mayor, &c.), he shall convict him without other proof. **Swearing in presence of justice.**

§ 3. If in the presence and hearing of a constable, if he is *unknown* to such constable, the said constable shall seize and carry him forthwith before* the *next* justice, (or mayor, &c. of a town corporate,) who shall convict him upon the oath of such constable. **In presence of a constable.**

If he is *known* to such constable, he shall speedily make information before some justice (or mayor, &c.), in order that he may be convicted.

So that the constable, if it is in his hearing, is required to prosecute; but any other person also may prosecute if he pleases. **In presence of any other.**

§ 4. And such justice (or mayor) shall immediately on such information on the oath of any constable or of any other person cause the offender to appear before him, and on proof of such information convict him; and if he shall not immediately pay down the penalty or give security to the satisfaction of such justice (or **Commitment on not paying the penalty.**

19 G.2. c.21. On not paying the charges. mayor, &c.), he may commit him to the house of correction, to be kept to hard labour for ten days.

§ 10. Also the charges of the information and conviction shall be paid by the offender, if able, over and above the penalties; which charges shall be ascertained by such justice (or mayor, &c.).

Fee. § 14. But for the information, summons, and conviction, no more shall be paid to the justice's clerk than 1*s.*

§ 10. And if he shall not immediately pay such charges or give security to the satisfaction of such justice (or mayor &c.), he may commit him to the house of correction to be kept to hard labour for six days, over and above such time for which he may be committed for non-payment of the penalties; and in such case, no charges of information and conviction shall be paid by any person.

Soldier or seaman. § 5. But if such soldier or seaman shall not so pay or secure the penalty, and also the costs of the information, summons, and conviction, he shall, instead of being committed to the house of correction, be ordered to be publicly set in the stocks for one hour for every single offence, and for any number of offences, whereof he shall be convicted at one and the same time, two hours.

Form of the conviction. § 8. The conviction shall be in the words and form following:

County of ——— } *BE it remembered, that on the ——— day of ———, in the ——— year of his majesty's reign,* A. B. *was convicted before me,* [*one of his majesty's justices of the peace for the county, riding, division, or liberty aforesaid; or before me ——— mayor, justice, bailiff, or other chief magistrate of the city or town of ———, within the county of ———,* as the case shall be,] *of swearing one or more profane oath or oaths, or of cursing one or more profane curse or curses* [as the case shall be]. *Given under my hand and seal the day and year aforesaid.*

Certiorari. Which conviction shall not be removed by *certiorari.*

Conviction to be filed. And the justice (or mayor, &c.) shall cause the conviction to be fairly written upon parchment, and returned to the next general or quarter sessions, to be filed by the clerk of the peace, and kept amongst the records.

Penalty on a justice omitting his duty. § 6. If any justice (or mayor, &c.) shall wilfully omit his duty in the execution of this act, he shall forfeit 5*l.*; half to the poor where he shall reside, and half to him that shall sue in any court of record.

Penalty on the constable. § 7. Constable omitting his duty shall on conviction, on oath of one witness, before one justice (or mayor), forfeit 40*s.*; to be levied by distress, half to the informer, and half to the poor: and if he have not sufficient goods whereon to levy, such justice (or mayor) may commit him to the house of correction to be kept to hard labour for one month.

4 G.4. c.31. § 13. Directing this act to be read four times in the year in all churches and chapels, is repealed by stat. 4 *G.* 4. *c.* 31.

Limitation of actions. § 12. But no person shall be prosecuted for any offence against this act, unless it be within eight days after the offence committed.

22 G.2. c.33. Navy. By stat. 22 *G.* 2. *c.* 33. Persons belonging to H. M.'s ships of war guilty of profane oaths or curses, shall incur such punishment as a court-martial shall impose.

Information.

County of ——— } THE *information of* A. I. *of* ———, *in the county aforesaid, yeoman, made on oath on this* ——— *day of* ———, *in the* ——— *year of the reign of* ———, *before me,* J. P. *esquire, one of his majesty's justices of the peace for the said county; who saith,*

That on ———, *the* ——— *day of* ———, *now last past, at* ———, *in the parish of* ———, *in the county aforesaid, he heard* A. O. *of* ———, *in the said county, yeoman, swear one profane oath,* [or, *curse one profane curse,*] *in these words,* to wit, &c.

Summons.

County of ——— } To the constable of ———.

WHEREAS *information hath this day been made before me,* J. P. *esquire, one of his majesty's justices of the peace for the said county, upon the oath of* A. I. *of* ———, *yeoman, that on* ———, *the* ——— *day of this present month of* ———, *he heard* A. O. *of* ———, *in the said county, yeoman, at* ———, *in the parish of* ———, *in the said county, swear one profane oath,* [or, *curse one profane curse*]; *these are therefore to command you to cause the said* A. O. *forthwith to appear before me to answer the premises, and to be further dealt with according to law. Given under my hand and seal at* ———, *in the said county, the* ——— *day of* ———, *in the* ——— *year of* ———.

See also title Oaths, Vol. III.

Commitment.

County of ——— } To the constable of ———, in the said county, and to the keeper of the house of correction at ———, in the said county.

WHEREAS A. O. *of* ———, *in the said county, day-labourer, is and stands convicted this day before me* ———, *one of his majesty's justices of the peace for the said county, of swearing one profane oath, on the* ——— *day of this present month of* ———, *at* ———, *in the parish of* ———, *in the said county, whereby he hath forfeited the sum of one shilling to the poor of the said parish of* ———; *and whereas the said* A. O. *hath refused and doth refuse to pay down the said sum of one shilling, for the use of the poor aforesaid, and also hath refused, and doth refuse, to give satisfactory security to pay the same; these are therefore to require you the said constable to convey the said* A. O. *to the house of correction at* ——— *aforesaid, and deliver him to the keeper thereof, together with this warrant. And I do hereby command you the said keeper to receive him the said* A. O. *into your custody, in the said house of correction, and there to detain and keep him to*

hard labour for the space of ten days. And for so doing this shall be your sufficient warrant. Given under my hand and seal at ——, in the said county, the —— day of ——, in the —— year of the reign of ——.

If he also refused to pay the charges, these words may be added, —*satisfactory security for the same: And whereas the said* A. O. *hath likewise refused, and doth refuse, to pay the sum of one shilling, which I have settled and ascertained as and for the charges and proceedings against him touching the premises, and hath refused and doth refuse to give satisfactory security to pay the same; these are therefore to require you, &c. for the space of sixteen days, &c.*

Sweets. See Excise.

Tanners. See Leather.

Taxes.

[43 G. 3. c. 99. c. 161. — 45 G. 3. c. 5. c. 71. — 48 G. 3. c. 55. c. 141. — 50 G. 3. c. 104. c. 105. — 51 G. 3. c. 72. — 52 G. 3. c. 93. — 54 G. 3. c. 141. — 55 G. 3. c. 161. — 56 G. 3. c. 66. — 57 G. 3. c. 25. — 58 G. 3. c. 16. c. 17. — 59 G. 3. c. 13. c. 51. c. 118. — 1 G. 4. c. 73. — 1 & 2 G. 4. c. 110. c. 113. — 3 G. 4. c. 50. c. 88. — 4 G. 4. c. 11. c. 45. — 5 G. 4. c. 44.

TAXES are certain duties or impositions upon the subject, which are applied in aid of the established government.

The taxes of this country are of various descriptions; all of which, may, however, be reduced to the following heads:

Customs. }
Excise. } See those respective titles, *ante*, Vol. II.
Land-tax. See Vol. III.
Stamps. See *ante*, this volume.

The substance of the different acts relative to the other branches of taxes it is attempted to comprise under the following heads; (viz.)

§ I. *Of the Act for* CONSOLIDATING *the Provisions respecting the Duties under the Management of the Commissioners for the Affairs of Taxes.*

II. *Of the Acts regulating the Assessment and Collection.*

III. *Of the Assesssed Taxes.*

IV. *Of Relief by compounding for Assessed Taxes.* [59 G. 3. c. 51. — 1 G. 4. c. 73. — 1 & 2 G. 4. c. 113. — 3 G. 4. c. 50. — 4 G. 4. c. 11. c. 45. — 5 G. 4. c. 44.]

§ I. *Of the Act for* CONSOLIDATING *the Provisions respecting the Duties under the Management of the Commissioners for the Affairs of Taxes.*

By stat. 43 *G.* 3. c. 99. The duties on windows or lights, inhabited houses, servants, carriages, horses, mules, and dogs, and other duties then lately transferred to the commissioners for the affairs of taxes (excepting the land-tax), shall be assessed, raised, levied, and paid under the regulations thereof. 43 G. 3. c. 99. Consolidating act.

§ 3. And as to new duties hereafter placed under their management to be assessed in like manner, this act shall, with respect to such duties, take effect from the time fixed by the acts granting them for the commencement of the same.

The regulations of stat. 43 *G.* 3. c. 99. it is endeavoured to arrange under the following articles : 43 G. 3. c. 99.

(1.) *Qualifications and Powers of Commissioners.*

(2.) *First Meeting of Commissioners ; and herein of the Appointment of Clerks and Assessors, and their Duties.*

(3.) *Appointment and Duties of Collectors.*

(4.) *Appointment and Duties of Inspectors or Surveyors ; and herein of Surcharges and Appeals.*

(5.) *Provisions respecting the Payment of Money in the Hands of Collectors ; and herein,*

In what Cases Parishes are answerable for their Default, with the Proceedings thereon.

(6.) *Of the Payments and Accounts of Receivers General ; and of Allowances to them and the Inspectors, &c.*

(7.) *General Provisions for enforcing and facilitating the Execution of this Act.*

(8.) *Recovery and Application of Penalties.*

(1.) Qualifications and Powers of Commissioners.

By stat. 43 *G.* 3. *c.* 99. § 4. No person shall act as a commissioner, in the execution of any act relating to the affairs of taxes, unless qualified as required by 38 *G.* 3. *c.* 48. (the land-tax (*a*)): but no qualification shall be required for any commissioner acting in any other county in *Wales* than is required for the commissioners acting in the counties of *Wales*, mentioned in the 38 *G.* 3. *c.* 48. 43 G. 3. c. 99. Commissioners, how qualified. Commissioners for the counties in Wales.

Commissioners shall take the oaths hereby prescribed, and be qualified as before mentioned, on pain of forfeiting 200*l.* Commissioners' oaths.

§ 5. And no person shall act unless he have first taken the oaths appointed by stat. 1 *G.* 1. *c.* 13.

§ 6. Every such commissioner before he shall execute his office, except in administering the oath hereinafter mentioned to any other commissioners, shall take the oath (A), (which oath any one person so appointed a commissioner may administer, although he Commissioners not to act before they have taken the oath (A).

(*a*) All justices of peace duly qualified may act as commissioners of land-tax: see stat. 45 *G.* 3. *c.* 48. Vol. III. *tit.* Justices of the Peace, § v. p. 157.

43 G.3. c.99. To subscribe oaths.

have not himself previously taken it,) and which shall be subscribed by the party taking the same, and the names of all so subscribing shall be transmitted to the commissioners of taxes at *Somerset-House*, by the clerks of the commissioners wherever such oaths shall be administered: but where any commissioner, acting for any district, who shall have qualified himself to act by taking such oaths, shall be present at any meeting of such commissioners in the same district, in such case the said oath shall be administered by him.

Commissioners having taken the oaths, if present, to administer it to others.

Qualification of commissioners in the cities of London, Westminster, the bills of mortality, and parishes of St. Mary-le-bone, and St. Pancras, in Middlesex.

§ 7. Within the city of *London*, and liberty of *Saint Martin-le-Grand;* within the city and liberty of *Westminster;* and in or for any other parish or place within the bills of mortality, or the parishes of *St. Mary-le-bone* or *St. Pancras*, such commissioner shall be possessed of lands, tenements, or personal estate, or of both together, to the amount of 5000*l.* at least, after payment of all debts; which qualification they shall swear to previous to their acting, according to the form following:

Oath.

I A. B. *do swear*, [or, *affirm*, as the case may require,] *that truly and* bonâ fide *I have such an estate, consisting of* [specifying the same], *of the clear value of* 5000*l. over and above what will satisfy and discharge all my debts.* So help me God.

And he shall be an inhabitant of the district for which he shall act, on pain, in each case, of forfeiting 200*l.* for every offence. Which oath shall be subscribed by the party, and their names transmitted to the tax-office.

Commissioners to act for any part of a county for which they are appointed.

§ 34. Any commissioner may act as such in any part of the county, riding, division, or place for which he is appointed: and all their warrants and precepts shall be executed by the respective persons to whom the same are directed, in any part thereof.

45 G.3. c.5. Benchers of inns of court, and persons holding certain offices, may be commissioners.

By stat. 45 *G.* 3. *c.* 5. § 1. These restrictions as to qualification and residence shall not restrain any bencher of any of the inns of court from acting as such commissioner for such inn of court and the inns belonging thereto; nor any of the officers, who by virtue of their office have heretofore acted under the land-tax act, from acting as such commissioners in the liberties of the palaces of *Whitehall* and *St. James's*.

Persons residing in certain parishes may be commissioners for Middlesex or Westminster.

By § 2. Persons residing in either of the parishes of *St. Clement Danes, St. Mary-le-Strand, St. John the Baptist*, in the liberty of the *Savoy*, parts thereof being situate in the county of *Middlesex*, and other parts in the city and liberty of *Westminster*, being specially named and appointed commissioners for *Middlesex* or for *Westminster*, and being duly qualified as directed by 43 *G.* 3. *c.* 99., may act as such for any or all of the divisions or districts within the said parishes or any of them.

43 G.3. c.99. Not to act where concerned either in their own right or as agents.

And by stat. 43 *G.* 3. *c.* 99. § 8. In case controversy arise between such commissioners, in any thing touching the execution of any act, in which any commissioner shall be interested or concerned in his own right, or in right of any person for whom he shall act as steward, agent, attorney, or solicitor, such commissioner shall have no voice, but shall withdraw during the debate of such controversy, until determined by the other commissioners, on pain of forfeiting 50*l.*

(2.) Meeting of Commissioners; and herein of the Appointment of Clerks and Assessors, and their Duties.

By stat. 43 *G.* 3. *c.* 99. § 9. Such commissioners as shall be duly qualified shall, in the respective hundreds or other districts, cities, and places, in the several counties and divisions for which they shall be appointed, meet every year at the most usual place of meeting within such districts, &c. respectively, on or before *April* 10th, yearly [*sed vide* 48 *G.* 3. *c.* 141. No. 1. Rule 1. *post*]; and any two or more shall hold such meeting or any other meeting, and do any thing required to be done by commissioners; and so many as shall be present at the first meeting in every year, or the major part of them, having qualified themselves as hereinbefore directed, shall elect one fit person to be their clerk, and one other fit person if they shall deem it necessary, to be his assistant, for all the assessments to be made of the several duties with which the said commissioners shall be charged within their respective limits, for one year; and such person shall, by virtue of such election, be the sole clerk for all the assessments for such year, and shall not be removable from his office during the year without just cause, and at a meeting of the commissioners for that purpose duly summoned by notice in writing, signed by two or more, and by the major part of them present at such meeting, and left at the usual place of abode of every qualified commissioner for such district, city, &c. and place.

43 G. 3. c. 99. Commissioners to meet annually.

Two commissioners sufficient to hold meetings.

Commissioners present to elect a clerk.

Person selected to be clerk for one year, and not removable except for just cause.

§ 9. And such commissioners shall also, at their first meeting, direct their several and joint precepts to such a number of inhabitants of each parish, or place, as they shall think most convenient, to be presentors and assessors for the same; requiring them to appear before them at a place and time appointed, not exceeding ten days after the date of their precepts; and at such their appearances the commissioners shall appoint such as they shall think proper to be assessors for such parish, &c. of the several duties for one year; and at the same time shall openly read unto them the several duties for which they are to be appointed assessors, and openly declare the effect of their charge unto them, and in what manner they ought to make their certificates and assessments; and shall appoint another day within the time hereinafter limited, for them to appear before them and bring in their certificates of assessments in writing under their hands, which shall be verified upon their oaths or solemn affirmations; which said assessors shall charge and assess themselves and all other persons chargeable with the duties so given to them in charge, and make their assessments according to the laws then in force, upon pain of forfeiting not exceeding 20*l.* nor less than 5*l.*; and at the time and place so prefixed for such assessors, shall return the names of two or more able and sufficient persons, within the bounds of their respective parishes or places, to the commissioners, to be by them appointed collectors of the several duties.

Commissioners to issue precepts to persons to be assessors. See 48 G. 3. c. 141. § 1. *post*. Appointment of assessors, and giving them instructions.

Assessors to bring in assessments on oath. Assessors to charge all persons liable to the duties, and to return names of persons to be collectors.

§ 17. And in all extra-parochial or privileged places and not within the constablewicks or precincts of the several assessors, and also in all parishes or other places where two sufficient inhabitants cannot be found, the commissioners may nominate and

43 G.3. c.99.

appoint two fit persons, residing in or near such respective places to be assessors, who shall discharge their office in manner hereby directed.

See 48 G.3. c.141. *post.* No.1. Rules 2. and 6.

§ 32. And if, in consequence of any failure of appointment there be no assessors or collectors appointed, two justices in any county, or the chief magistrate and justices in any city, or place being a county of itself, shall, on notice of such default from the surveyor, appoint such assessors or collectors; and the persons so appointed refusing to act or to take the oath required, forfeit 50*l.*

Oaths to be taken by assessors.

Commissioners empowered to administer oaths under this act.

§ 10. And every such assessor shall, before execution of the said employment, take the oaths required by stat. 1 *W.* & *M.* *c.* 8., or, being a quaker, may make and subscribe the declaration of fidelity prescribed by stat. 1 *W.* & *M.* *c.* 18.; which any one or more commissioners duly qualified, by whom such assessors shall be appointed, are to administer, as also every other oath or affirmation required by this or any act relating to duties to be assessed under the regulations hereof to be taken before such commissioners by any person whatever, in any matter touching the execution thereof.

§ 11. And every assessor shall take the oath, or, being a quaker, shall make and subscribe the solemn affirmation (B in Sched.), before the commissioners for executing this act, on pain of forfeiting 50*l.* for every offence.

Assessors to deliver assessments, which are to be signed by the commissioners.

Commissioners to sign the assessment, and the clerk to make out three duplicates.

Commissioners to appoint collectors.

§ 12. The assessors so appointed shall annually make and deliver in writing their certificates of assessments of all the duties unto any two or more commissioners, on or before the 5th of *June*, or as soon after as conveniently can be done; and the said commissioners shall forthwith sign the same, testifying their allowance thereof; and shall sign and seal three duplicates thereof to be prepared by their clerk, and forthwith shall nominate and appoint two of the persons named or presented in each assessment to be collectors, or any other two persons as such commissioners are hereby authorised to appoint, for the respective divisions and places for which collectors shall be so presented, and shall deliver one of the duplicates of such assessments so allowed, together with warrants under the hands and seals of two or more of them for collecting the same, unto the respective collectors, and one other duplicate to the surveyor of the district for the time being; and the third to be kept by such clerk for the use of the commissioners.

Where assessments are not signed in time, they may be allowed by commissioners in the same county.

§ 30. And if any assessments and duplicates be not signed and allowed in due time, for want of a sufficient number of commissioners attending at the proper time and place, the commissioners living in any parish or place within the same county or division shall allow and sign such as may be wanting.

Commissioners not meeting at the time prescribed, may meet at other times.

§ 31. But, if the said commissioners, or any two of them, do not meet, and any of the powers created hereby, or by the acts before mentioned, be not executed at the time prescribed, any two or more commissioners for the respective places where such default shall happen may meet and execute the said powers at any other time.

Assessors neglecting their duty.

§ 18. And, in case such commissioners shall fail to appoint assessors, conformably to this act, or such assessors shall neglect to perform their duty, the surveyors shall perform their ser-

vices, until such assessors shall be appointed, and shall act with effect.

43 G.3. c.99. Commissioners not appointing assessors.

§ 16. Assessor refusing to take the office, or neglecting his duty, forfeits 20*l.*

Duplicates of assessment to receiver-general and king's remembrancer.

§ 46. Describes the return of duplicates of assessment; one to the respective receivers-general, and the other to the king's remembrancer's office in the exchequer.

Contents of duplicates.

§ 46. Such duplicates shall be made for the same hundreds, &c. for which distinct duplicates are directed to be made out by the 38 *G.* 3. *c.* 48.; and shall contain the names and surnames of the several assessors and collectors of every hundred, &c., and the full amount of the sum given in charge to the collectors throughout the year. And if any commissioner's clerk neglect to make out such duplicates within such time, (viz. one month after *Feb.* 10. yearly,) or shall make any false entry, or omit any sum, he shall forfeit 100*l.*, and, on conviction, be dismissed from his office.

Penalty on the clerk's neglect.

In case of failure in assessing, &c. receiver-general to certify the same to the exchequer.

§ 47. And in case of failure of assessing the duties in any parish, &c. or of returning the duplicates, the receiver-general shall certify the same to the barons of the exchequer, together with the names of the commissioners, assessors, collectors, and persons charged with such duties, who shall have made failure in payment thereof. And they shall be respectively liable to process, from time to time, by writ of *distringas,* upon the application of the commissioners of taxes; unless the last-mentioned commissioners shall certify to the court, if during term, or to one of the barons in the vacation, that the commissioners, &c. have complied with this act; in which case they may respite process till a future day, and so from time to time, or to be finally discharged.

45 G.3. c.71. Duplicates to be first sent to the tax office.

By stat. 45 *G.* 3. *c.* 71. § 2. The above-mentioned duplicates shall hereafter be sent by them to and delivered at the office for taxes, for the previous inspection of the commissioners of taxes, who may cause copies thereof, or any part thereof, to be taken, and who shall afterwards transmit such duplicates to the king's remembrancer, on pain of forfeiture of 50*l.* by the clerk to the commissioners wilfully offending herein.

48 G.3. c.55. Allowances to clerks of districts.

And for duly executing all things directed to be done by or under the commissioners, by stat. 48 *G.* 3. *c.* 55. § 7., the clerk performing the same shall, by warrant under the hand of two or more of the commissioners of each district respectively, receive from the respective receiver-general, provided the said acts be duly executed, and the said assessments, &c. and the duplicates, duly made and delivered, but not otherwise, the following sums; viz. if the total amount of such allowance for one year, calculated at the rent of 1½*d.* in the pound, on the monies assessed in that year, and paid to the receiver-general, shall amount to 100*l.*, then such clerk shall not receive more than at the rate of 1½*d.* in the pound of monies so paid.

If such amount shall in any district in one year exceed 96,000*l.*, then the clerk of such district shall receive at the rate of 1½*d.* in the pound upon such sum of 96,000*l.*; and a further allowance of one half of 1½*d.* for every pound exceeding 96,000*l.* And if such total amount of allowance, calculated at the rate of 1½*d.* in the pound, shall not amount to 100*l.*, then such clerk shall receive an

allowance at the rate of 1½d. in the pound, so that the allowance calculated as last aforesaid shall in no case exceed 100*l.* *per annum.*

(3.) Appointment and Duties of Collectors.

43 G.3. c.99. Appointment of collectors.

Collectors to demand duties within ten days after they are due;

and to give acquittances.

By stat. 43 *G.*3. *c.*99. § 12. The commissioners shall nominate and appoint two of the persons named or presented in each assessment, or any two other persons, such as they are authorised to appoint, to be collectors. And the said collectors shall demand the several sums contained in the said duplicates from the parties charged, at the places of their last abode, or on the premises charged with the assessment, as the case may require, within ten days after the duties shall be respectively payable next after such assessments shall have been delivered to them; and upon payment thereof to give acquittances under their hands, (without taking any thing for the same, the stamp-duty excepted,) which shall be full discharges to the persons making the payments.

Collectors to give securities.

§ 13. And the collectors so presented to the commissioners shall (if required) give sufficient security to any two or more commissioners, equal to the whole duty assessed and to be collected in each district or place by them respectively, for their duly paying such monies as they shall receive, and duly demanding the sums assessed of the persons from whom the same are payable; and in case of non-payment, their duly enforcing the powers of this act against defaulters; which security the commissioners are hereby authorised to take by a joint and several bond with two sureties at the least, to and in the names of any two or more commissioners, in such penal sum, and with a condition to the same effect; and on failure of such persons so first named or appointed, giving such security, if required, the commissioners may appoint any other sufficient persons, who can give such security, residing within the limit of the same district or place, to be collectors; and every such bond shall be prosecuted by such commisssioners on any default of the collector: but no such bond shall be put in suit against any sureties for any deficiency other than what shall remain unsatisfied after sale of the lands, tenements, goods, and chattels of such collector, in pursuance of the powers hereby given; nor be subject to stamp-duty. But if no persons within the said limits be willing or able to give such security, then the persons so first presented (§ 9.) shall be collectors within the limits of such districts or places respectively.

Churchwardens, &c. or inhabitants of parishes, may require security to be taken from collectors.

In which case no collectors shall be ap-

§ 14. And if any two inhabitants of the district or place for which such collector may be named, being respectively charged to any of the said duties, or any two churchwardens or overseers, or guardians of the poor of any description, or any seven of the select vestry, where a select vestry is authorised for a parish, shall require security to be taken of the collectors to be appointed for the parish or place on behalf of which such application shall be made, and shall name proper persons to be collectors, willing to give such security, collectors shall not be appointed until such security given; and if the persons so returned to be collectors shall not give such security, then they may appoint such persons, and no others, who shall have been named to them by the per-

sons respectively before mentioned as fit and proper persons to be collectors, and who will give the security required. 43 G.3. c.99. pointed until security be given.

§ 15. Within the bills, and the parishes of *Saint Mary-le-bone* and *Pancras*, the appointment of collectors shall belong to the resident commissioners, and no other commissioners shall interfere; and where two shall not be resident, the commissioners of the adjacent parish or place may appoint, or concur with a resident commissioner in the appointment. And every collector appointed under this act shall also, by virtue of such appointment, act as an assessor for the same parish or place. Collectors, how to be appointed within the bills of mortality.

§ 16. Any assessor or collector refusing to take the office, or neglecting his duty, may be fined by any two or more commissioners, not exceeding 20*l*. But no inhabitants of cities, boroughs, or towns corporate shall be compelled to be assessors or collectors out of the limits of such places. Penalty on assessors or collectors for disobedience or neglect.

§ 17. In privileged and extra-parochial places, and where two sufficient inhabitants cannot be found, any two commissioners may appoint one or more collectors.

§ 32. And if, in consequence of any failure, there be no collectors appointed, two justices in any county, or the chief magistrate and justices in any city or place, being a county of itself, shall (on notice of such default from the surveyor) appoint collectors; and if the persons so appointed refuse to act or to take the oath, they shall forfeit 50*l*.

§ 33. On payment of the duties being refused, on demand made by the collector, according to the precept or estreat delivered to him by the commissioners, &c. collector may distrain for the same upon the messuages, lands, tenements, and premises charged, or may distrain the person so charged by his goods and chattels, and all such other goods and chattels as they are hereby authorised to distrain, without any further authority than the warrant delivered to him by the commissioners at the time of his appointment. And the distress so taken shall be kept four days; when, if the duties be not paid, the same is to be appraised by two sufficient persons, and there sold, and the overplus (after deducting expenses) shall be paid to the owner. Collectors may distrain.

§ 33. Moreover, collectors may, in the daytime, break open any house, having a warrant under the hands and seals of two commissioners for that purpose; and calling to their assistance the constable, tithingman, or headborough of the place where any refusal, neglect, or resistance shall be made; which officers are required to assist, at their peril. And where any person charged shall refuse to pay, within ten days after demand, and no sufficient distress can be found, any two commissioners, by warrant under their hands and seals, may commit to the common gaol, until payment. And in case any difference shall arise on taking such distress, the same shall be determined by two such commissioners. May break open houses.

The collector of the house and window tax under stat. 43 *G.* 3. *c.* 161. may distrain under stat. 43 *G.* 3. *c.* 99. § 33. for arrears of those taxes the goods of a third person found on the premises charged, though the goods are only borrowed, and the person in arrear has other goods of his own on the premises sufficient to satisfy the arrears. *Inson* v. *Dixon*, 1 *M & S.* 601.

Where goods were devised to trustees, to be held and enjoyed by the person who for the time being would be entitled to enjoy the mansion-house of the testator, and after his decease, his son being in possession thereof, the goods were seized as a distress under warrant from the commissioners, for arrears of assessed taxes due from the son; the court of K. B. held, that not being the goods of the person charged, he having the use of them only in a particular prescribed way, there was no authority, under stat. 43 *G.* 3. *c.* 99. § 33., to distrain those goods. *Semble*, if the party had been a trader, the goods, under the circumstances of the case, would not, under the 21 *J.* 1. *c.* 19., have passed to his assignees, as within his order and disposition, with the consent of the true owner; the son having the use and possession, not by the consent of the trustees, but under the will. *The Earl of Shaftesbury and others* v. *Russell*, *E. T.* 4 *G.* 4. 1 *B.* & *C.* 666.

Held also, that as the jurisdiction of the superior courts was not expressly taken away by stat. 43 *G.* 3. *c.* 99. § 33., in cases of distress for taxes, an action at common law is maintainable for such a distress, if wrongful. *S. C.*

The warrants and precepts of commissioners may be executed in any part of the county.

Forms of Proceedings against a Collector of Taxes for neglect of Duty, on Stats. 43 *G.* 3. *c.* 99. § 16. *ante*, p. 333.; and 3 *G.* 4. *c.* 23. § 2. Vol. I. tit. Conviction.

A.

(A.) Information.

County of } ——— } *THE information and complaint of* A. I. *of* ———, *within the parish of* ———, *in the county of* ———, *esquire, made on oath before us*, J. C. *and* K. C. *esquires, two* [or, *me*, J. C. *esquire, one*, according to stat. 3 *G.* 4. *c.* 23. § 2.] *of the commissioners for executing in the said county the several acts relating to the duties of assessed taxes appointed to act as such commissioners* [or, *commissioner*, as the case may be,] *in the district* [or as the case may be] *of* ———, *in the said county, on the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———: *who says that* T. G., *of the parish of* ——— *aforesaid, yeoman, being one of the collectors of taxes duly appointed in and for the said parish of* ———, *from the fifth day of* April, *one thousand eight hundred and* ———, *to the fifth day of* April *following, did neglect his duty; for that he the said* T. G., *on*, &c. [Here set forth the fact complained of, following as nearly as possible the words of the statute, which creates the offence;] *for which offence, and by which neglect of duty, he the said* T. G. *has forfeited any sum not exceeding twenty pounds, to be distributed as the statute directs: whereupon the said* A. I. *prays the judgment of us*, [or, of *two* of] *the said commissioners of taxes in the premises, and that the said* T. G. *may be summoned to answer the premises before us* [or, *two* of] *the said commissioners.*

A. I.

Exhibited and sworn before us, J. C. *and* K. C., [or *me*, J. C. as the case may be.]

(B.) Summons thereon. B.

County of ——— } To *T. G.* of ———, in the parish of ———, in the county of ———.

WHEREAS information and complaint have been made before me, J. C. *esquire, one* [or if before two commissioners say, *us,* J. C. *and* K. C. *esquires, two*] *of the commissioners for executing the several acts relating to the duties of assessed taxes, and appointed to act as such commissioner,* [or, *commissioners,* as the case may be,] *in the district of* ———, [or, as the case may be,] *in the said county, upon oath, by* A. I. *of* ———, *within the parish of* ———, *in the county of* ———, *esquire: for that you the said* T. G. *being one of the collectors of taxes duly appointed in and for the said parish of* ———, *from the fifth day of* April, *one thousand eight hundred and* ———, *to the fifth day of* April *following, did neglect your duty; for that you the said* T. G., *on,* &c. [here set forth the fact for which the information is laid,] *for which offence, and by which neglect of duty you the said* T. G. *have forfeited any sum not exceeding twenty pounds, to be distributed as the statute directs. These are to require you the said* T. G. *to appear before me,* [or, *us,* as the case may be,] *and such other of the said commissioners for executing the said acts relating to the duties of assessed taxes as shall be present at* ———, *in* ———, *in the said county, on* ———, *the* ——— *day of* ——— *next, at the hour of* ——— *in the forenoon, to answer to the said information and complaint, and to be further dealt with according to law. Given under my hand* [or, *our hands,* as the case may be,] *this* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———.

J. C.

(C.) Conviction. C.

County of ——— } *BE it remembered, that on the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———, *at* ———, *in the county of* ———, A. I. *of* ———, *within the parish of* ———, *in the county of* ———, *esquire, personally came before me,* J. C. *esquire, one* [if the information were laid before one commissioner, according to stat. 3 *G.* 4. *c.* 23. § 2. to summon before two; or, if laid before two, say, *us, two*] *of the commissioners for executing in the said county the several acts relating to the duties of assessed taxes, appointed to act as such commissioner,* [or, *commissioners,* as the case may be,] *in the district of* ———, [or, as the case may be,] *in the said county, and exhibited an information on oath before the said commissioner,* [or, *us,* as the case may be,] *that* T. G. *of the aforesaid parish of* ———, *yeoman, being one of the collectors of taxes duly appointed in and for the said parish of* ——— *from the fifth day of* April, *one thousand eight hundred and* ———, *to the fifth day of* April *following, did neglect his duty; for that he the said* T. G. [here set forth the offence, as charged in the information,]

contrary to the form of the statute in such case made and provided: whereupon the said T. G., *after being duly summoned to answer the said charge, appeared before us,* J. C. *and* K. C. *esquires, two of the commissioners for executing the several acts relating to the duties of assessed taxes in the county, and district aforesaid, on the ——— day of ——— instant, at ———, in the said county,* [or, if he neglects to appear, the form must be changed accordingly,] *and having heard the charge contained in the said information, declared he was not guilty of the said offence* [or, if he pleads guilty, the record must be altered according to the fact]: *whereupon we the said commissioners last named did proceed to examine into the truth of the said charge contained in the said information, and on the ——— day of ———, at the parish of ——— aforesaid, one credible witness, to wit,* A. W. *of ———, in the said county, labourer, upon his oath deposeth and saith, in the presence of the said* T. G., *that within ——— months next before the said information was made before the said commissioner,* [or, *commissioners,* as the case may be,] *first before named by the said* A. I., *to wit, on ——— the ——— day of ——— last, he the said* A. W. [Here state the evidence, and as nearly as possible in the words used by the witness, and if more than one witness be examined, state the evidence given by each.] *Therefore it manifestly appearing to us that he the said* T. G. *is guilty of the offence charged upon him in the said information, we do hereby convict him of the offence aforesaid, and do declare and adjudge, that he the said* T. G. *hath forfeited the sum of twenty pounds of lawful money of* Great Britain, *for the offence aforesaid, but which said penalty we have mitigated to ten pounds, to be distributed according to the form of the statute in that case made and provided, that is, one moiety of the amount of the said penalty to the use of his majesty, and the other moiety to the said* A. I., *who informed the said commissioner* [or *commissioners*] *of the said offence, to be paid to the said* A. I. *by the receiver-general for the said county of ———; and we do hereby assess the said sum of ten pounds upon the said* T. G., *and charge and require the same to be charged in the assessment of the said parish of ———, according to the directions of the statute, to be levied in like manner as the duties of assessed taxes, and which adjudication and assessment we do hereby certify to the commissioners of taxes as the act directs. Given under our hands and seals at ———, in the said county, this ——— day of ———, in the year of our Lord one thousand eight hundred and ———.*

J. C.
K. C.

(4.) Appointment and Duties of Inspectors or Surveyors; and herein of Surcharges and Appeals.

43 G.3. c.99. Appointment of inspectors or surveyors.

By stat. 43 *G.*3. *c.*99. §20. Persons who, as inspectors or surveyors, may be authorised to act in execution of any act in force at the time of this act, shall act as such for this act; and the king, or any three or more of the lords commissioners of the treasury, or the high treasurer for the time being, from time to time, may appoint such persons as he or they respectively shall think proper, to be officers for the survey and inspection of the duties, under the manage-

ment of the commisioners of taxes, and for executing all things belonging to their office. 43 G.3. c.99.

Surveyors to certify surcharges twice in the year.

§ 21. Every surveyor or inspector shall [on or before the 15th of *December* in each year of assessment, see stat. 48 *G.* 3. *c.* 141. No. IV. Rule 1. *post*, p. 331.] certify in writing, to two or more commissioners, all such surcharges as they may lawfully make; and shall give to every person so surcharged, or leave, at his last or usual place of abode in the district where such surcharge shall be made, notice in writing thereof, and of the amount for which he shall have been charged by virtue of such certificate.

Notice thereof to be given.

Penalty on surveyor being guilty of vexatious or corrupt practices.

§ 23. And if he shall wilfully, through favour, under-rate or omit to charge any person, or shall be guilty of any corrupt, vexatious, and illegal practices in the execution of his office, he shall, for every offence, forfeit 100*l.*; and on conviction be discharged from his employment.

Of appeals.

§ 24. Persons over-charged by assessment or surcharge may appeal to the commissioners (*a*), on giving ten days' notice to the surveyor, inspector, or assessor: which appeals any two or more commissioners shall hear and determine, unless notice has not been given; in which case they shall dismiss the appeal, and confirm the assessment or surcharge.

Assessments not to be altered before the time for hearing appeals, except in certain cases.

§ 25. But no assessment delivered to any two or more commissioners by any assessor shall be altered by them before the time for hearing and determining appeals, and then only upon a surcharge not appealed against, and according to such surcharge, or upon the commissioners hearing the matter of appeal particularly relating thereto, upon a general appeal-day duly appointed; except in such cases only where such commissioners are specially authorised to alter or rectify any such assessment by the act or acts before mentioned. And if any clerk to such commissioners, or any other person, shall alter or procure or suffer to be altered any assessment after allowance by the commissioners, except as aforesaid, or in cases of appeal, and by their order made after appeal, he shall forfeit 50*l.*

Penalty on clerks or other persons altering the assessment improperly.

Commissioners, on hearing appeals, not to make abatement, unless in certain cases.

§ 26. The commissioners shall not, upon hearing any appeal, make an abatement in the charge made by assessment, or by the surcharge of any assessor, &c. but the same shall remain part of the annual assessment, unless it shall, upon such appeal, appear to the major part of the commissioners then present, by examination of the appellant upon oath or affirmation, or by other lawful evidence to be produced by him, that he is over-rated by any such assessment or surcharge, and unless the appellant shall produce before them a true and complete list, account, declaration, or return as shall be required by the acts before mentioned, and verify the same upon oath or affirmation; and such surveyor, &c. may attend in support of the assessment or surcharge; and may produce any lawful evidence in support of the same; and shall have liberty to be present during all the time of hearing such

Proceedings therein.

(*a*) By stat. 48 G.3. c.141. No.III. Rule 6. all appeals against the first assessments, in any year, shall be heard and determined between the 20th of *August* and 10th *September* following. By the same act, No. IV. Rule 2., all appeals against surcharges shall be heard and determined between 20th of *January* and 20th of *February* following.

43 G.3. c.99. respective appeals, and of the said commissioners determining the same: but if upon such appeal it shall appear that the persons so assessed or surcharged ought to be charged to any amount beyond such assessment or surcharge, they may charge such person to the amount of the sum omitted, as they might have done, if a true and perfect assessment had been made in the first instance; and no barrister, solicitor, or attorney, or any person practising the law, shall be allowed to plead before the commissioners on such appeal, either *viva voce* or by writing.

Notice to be given of the times and places for hearing appeals.

§ 27. And any two or more commissioners shall give such collectors notice at what time, within the periods limited, and at what place the appeals may be heard and determined; and every collector shall also, within ten days after such notice, cause public notice to be given in every parish church or chapel of ease belonging to any such parish within his district or division, immediately after divine service on the Lord's day, (if divine service shall be performed in the said parish within that time,) or otherwise in the church of the next adjoining parish, of the time and place so appointed for such appeals, and shall also cause the like notice to be fixed in writing upon the door of each respective parish church or chapels of ease, that all persons aggrieved may know when and where to make their appeal to the said commissioners.

Determination of the commissioners on appeals to be final.

§ 29. The determinations of any two or more commissioners, or the major part of them present on the days by them appointed for hearing appeals, shall be final; and neither their determination, nor the assessment made thereupon, shall be altered on any pretence whatever at any subsequent meeting or at any other time or place, except always where the opinion of the judges shall be required according to the provisions of any act concerning the same.

(5.) Provisions respecting the Payment of Money in the Hands of Collectors; and herein, in what Cases Parishes are answerable for their Default, with the Proceedings thereon.

Collectors to pay amount of duties to the receiver-general or his deputy.

§ 48. The particular collectors, who shall collect monies for the duties assessed under this act, shall pay the same to the receiver-general, or the deputy whom he is authorised to appoint, and for whom such receiver shall be answerable, whereof notice shall be given by the receiver-general, to any two or more commissioners within their respective districts, yearly, within 20 days after the first meeting; and so in like manner after the death or removal of any deputy. And the receipts given by such receiver (which shall be *gratis*) shall be a discharge to every collector.

Collectors not to travel more than 10 miles to pay receiver-general.

§ 50. But the particular collectors shall not be obliged to travel above ten miles from their habitations, for payment of any money by them received unto such receiver-general or his deputy.

Receiver-general may levy for money on collector's goods.

§ 49. And the receiver-general or his deputy may call upon and hasten the collectors to make their payments; and in default thereof may cause the sums received and not paid to be levied by distress on the collector's goods, by warrant under the hands and seals of any two or more commissioners.

§ 39. And at the end of every quarter appointed for payments of the sums assessed, or within one calendar month thereafter, or at such other times as they shall think expedient, but nevertheless twice at least (*viz.* on or before the first of *November* and the first of *May* following) in every year, and so often as shall be necessary, any two commissioners, within their respective districts, shall call before them the collectors of each parish, and shall examine them upon oath or affirmation, and assure themselves of the money collected and paid to such collectors, and make such order for payment of the same to the receiver-general on the day or time appointed for receiving the same, as they shall judge necessary; and shall also ascertain the sums in arrear, and the causes thereof; and also shall examine the collectors touching the due payment over of any sum collected by them in any preceding part of the same year; and in every case shall make such order therein as aforesaid. And they are in every year to call before them the collectors in any former year, where any sum shall be in arrear or unpaid to the receiver-general, and shall in like manner examine them, and shall ascertain the sums collected by them, and the sums in arrear, and also the sums paid over to the receiver-general, and the sums remaining in their hands, and shall make such order as they shall judge necessary to prevent any failure in the payment in any part of the assessment, and so from time to time as long as any arrears shall remain charged upon any parishes or places; and the respective receivers-general, inspectors, and surveyors, shall, when required so to do, assist such commissioners in their enquiry in all matters relating to their respective offices.

43 G.3. c.99. Commissioners, quarterly, or twice in a year at least, to call the collectors before them and examine them upon oath as to the sums collected by them and paid to the receiver-general.

Also the collector of any former year.

Receiver-general, inspector, and surveyor, to assist commissioners.

§ 40. Collectors neglecting their duty shall be dismissed, and the commissioners may appoint others, either by indorsement on the same precepts of appointment, or by other their precepts, in like manner, on the same security being given, and with the same powers as such first collectors were appointed. And the collectors dismissed shall deliver up to them on demand of such commissioners, or in their presence to the new collectors, the certificates of assessments which they were charged to collect, and all accounts of receipts and vouchers of payment, and also shall pay to the receiver-general all sums then in their hands, at such time as such commissioners shall appoint, on pain of forfeiting 50*l*. to be charged in any assessment of such duties for such parish or place, and recovered as such assessment may be recovered, and shall also remain liable to such other forfeitures and disabilities that may be incurred by this act, for detaining the money in his hands after demand of the same.

Collectors to be dismissed for neglect of duty.

§ 41. And if any collector, being duly summoned, shall refuse to attend, or shall not answer all such lawful questions as shall be demanded of him, touching the execution of his office, or shall refuse or neglect to produce to the commissioners the certificates of assessments, accounts, or vouchers, or shall not obey the order of such commissioners, he shall forfeit 50*l*., to be charged and recovered in like manner, over and above any forfeiture or disability that may be incurred by virtue of this act.

Collectors refusing to attend commissioners with their assessments, &c. to forfeit 50*l*.

§ 41. And whenever any money shall be detained by any collectors, or any penalties imposed on them remain unpaid, and the same cannot be recovered under the warrant or authority of the

Proceedings where money cannot be re-

43 G. 3. c. 99.

vered from collectors under the commissioners' warrant.

respective commissioners, or such commissioners shall neglect to issue such warrant, then such part which shall have arisen from the duties shall be recoverable as a debt upon record to the king, with costs; and such part thereof, which shall arise from any penalty as aforesaid, may be recovered by action or information, like other penalties under this act, with full costs; and the sum so recovered shall be paid to the receiver-general, in aid of the parish or place answerable for the same.

Collectors, when required, to deliver a statement of their account, on penalty of 20*l.*

§ 42. The collectors of any parish, when required by any two churchwardens and overseers, or guardians of the poor, or by the select vestry, or any seven of them, shall, within 14 days after such demand, deliver to them respectively an account in writing of the sums received by such collectors, of the sums in arrear, and of the sums remaining in hand, and also of the sums paid to the receiver-general, on pain of forfeiting 20*l.* to the poor where the offender shall reside.

Parish to be answerable for collectors not demanding duties, &c.

§ 43. And if any collectors do not demand the duties of the parties charged, or do not leave a demand in writing at their last abode, or on the premises, or, in case of default, do not execute the precept or warrant for recovering the same, within two calendar months after the duties are payable, the names of such persons cannot be inserted in the schedule to be returned by the receiver-general into the exchequer, but the parish must be answerable for the same.

Collectors not to insert in any schedule to be returned into the exchequer any person as a defaulter, unless upon oath as to certain particulars.

§ 44. And no collector shall be allowed to insert in any schedule the name of any person to be returned into the exchequer as being a defaulter, unless on his oath or solemn affirmation before two commissioners (who respectively shall certify the same) that the sum is due and wholly unpaid, either to the collector or to any other person for him, to the best of his knowledge and belief, and that such person became insolvent or bankrupt before the day on which the duties became payable, and had not goods and chattels sufficient whereon to levy the same, within the parish or place for which such collector shall have have been appointed at any time since such duties became payable, or that such person removed therefrom, before the day on which such duties became payable, without leaving therein sufficient goods whereon such duties then payable could be levied; and that there were not, nor are, any goods and chattels of any person liable to the payment of such duties in arrear, or any part thereof, whereby the same could be levied; which oath or affirmation shall be indorsed on such schedule.

Collectors to make a return upon oath of persons from whom the duties cannot be collected.

§ 45. And the collectors shall make a due return, under their hands, to such commissioners, containing the names, surnames, and places of abode of every person within their repective collections, from whom they shall not have been able to collect or receive such duties for any of the causes before mentioned, and which shall have been duly verified on oath as aforesaid, and the particular reason for returning each defaulter, and the sums charged upon every such person.

Proceedings thereon.

§ 46. And such commissioners, after due examination on such oath or affirmation, shall ascertain the sums which shall have been discharged from assessment for any cause specially allowed; and shall also make out schedules of the sums so discharged, and the sums with which the defaulters ought to be charged, and the sums which ought to be re-assessed upon the parish; and shall

deliver the same under the hands and seals of two commissioners to the receiver-general, to be returned into the exchequer, in order that process may issue for recovery thereof; and in default of such schedule, the receiver-general shall return the parish *insuper:* and if any collector neglect to make such returns, he shall forfeit 100*l.* 43 G. 3. c. 99.

§ 51. A like penalty of 100*l.* is incurred by collectors gathering by a false book, or receiving more than is charged in the rate, or who fraudulently alter any rate after the book has been signed or allowed.

Proceedings where collectors refuse to pay or account.

§ 52. And if any collectors refuse to pay the duties received by them, or to deliver their accounts, the commissioners may imprison them and seize their estate and effects, wheresoever they can be found. And the commissioners, so seizing and securing, shall appoint a meeting of the commissioners, of which they shall give at least ten days' notice. And in case the collector's accounts are not delivered, or the money detained by him is not paid, the major part of the commissioners present shall sell his estates and effects, to satisfy the debt due from him, together with all costs and charges; rendering the overplus (if any) to the owner of the estate.

48 G. 3. c. 55. Collectors.

By stat. 48 *G.* 3. *c.* 55. Every collector shall have 3*d.* in the pound for what money he shall pay to the receiver-general in due time for all the duties in this act, except schedule (L); and for the duly writing and transcribing the assessments, duplicates, warrants, and estreats.

(6.) Of the Payments and Accounts of Receiver-General.

43 G. 3. c. 99. Receiver-general to deliver a certificate of the sums received by him in each parish.

By stat. 43 *G.* 3. *c.* 99. § 53. The receiver-general or his deputy, under his hand, shall deliver a certificate fairly written to such person as any two of the commissioners of the district, or any three of the commissioners of taxes for the time being, shall under their hands authorise and appoint to attend for that purpose, containing the respective sums paid by the respective collectors for each parish or place in that district; and if such receiver or his deputy refuse or neglect to deliver such lists or certificates, he shall forfeit not exceeding 20*l.* See also stat. 48 *G.* 3. *c.* 141. No. V. Rule 1.

Receiver-general to return no place insuper, but in certain cases.

§ 55. No receiver-general (unless his accounts are passed within two years) shall return any county or place *insuper* for monies in arrear; but he shall be answerable for the same.

45 G. 3. c. 71. Receiver-general's accounts, in England, to be verified on oath.

By stat. 45 *G.* 3. *c.* 71. § 1. Every account of the monies received and paid by any receiver-general of any of the said duties or by his deputy in *England*, which shall be transmitted to the office for taxes according to the usage thereof, shall be verified on the oath of such receiver-general, or his deputy, to the best of his knowledge or belief, which oath may be administered by any commissioner acting in the execution of any of the acts relating to the said duties in the district where he shall so act; saving always, to the barons and officers of H. M.'s court of exchequer in *England*, and the commissioners for the affairs of taxes, their power respectively to administer such oaths according to ancient usage.

3 G.4. c.88.

By stat. 3 *G.* 4. *c.* 88. intituled "*An act to amend the laws relating to the land and assessed taxes, and to regulate the appointment of receivers-general in* England *and* Wales;" passed 29th *July*, 1822.

Allowances to receiver-general by poundage to cease.

§ 1. It is enacted that so much of the several acts relating to the said taxes, and compositions for assessed taxes, which allow a compensation to each receiver-general in *England* and *Wales* by a pound rate on the sums by him respectively paid into the exchequer, or which require the said receivers-general to appoint sufficient deputies to receive the said taxes, shall, from and after the 5th of *April*, 1822, be repealed.

Receivers, and other persons to be appointed under this act, to observe the rules following.

§ 2. Every person who, after the 5th of *April*, 1822, shall be appointed to be receiver-general of the said taxes, and any other taxes under the care and management of the commissioners of taxes; and every other person to be appointed by the commissioners of H. M.'s treasury, to do any part of the duty of any such receiver-general; or for the survey and inspection of any of the said taxes; and all other persons appointed by the commissioners acting in the execution of the said acts, in the several counties, divisions, cities, &c. &c. and places within *England* or *Wales*, shall observe and be subject to the rules and regulations set forth in this act, and the penalties therein contained; which rules and regulations shall be deemėd a part of this act, as if the same had been severally inserted herein under special enactments.

No. I. — Rules and Regulations touching the Office of Receiver-General.

Salary to receiver-general not to exceed 600*l.* per ann.

First. — Every receiver-general to be appointed as aforesaid shall be entitled to such annual salary, payable half-yearly by equal portions, as the said commissioners of the treasury for the time being, or any three or more of them, shall appoint, not in any case exceeding the sum of 600*l.* *per annum*, to be allowed to him out of any monies in his hands of the said taxes, by virtue of the warrant of the commissioners for the affairs of taxes, for the time being, or any two or more of them.

Appointment to be free of charge.

Second. — Every receiver-general to be appointed as aforesaid shall be, on his first appointment, charged with the stamp-duty payable by law on the bond to be given in such case, and every renewed or succeeding appointment of the same person shall be free of stamp-duty; but such receiver-general shall not be required to renew his bond under each or any new or succeeding appointment, except in the case of any change in his security, or under circumstances that may render any such renewed bond necessary, under the directions of the said commissioners of the treasury, which renewed bonds shall also be free of stamp-duty; and such receiver-general shall not in any case be liable to or charged with any fee or gratuity on his commission, warrant, or other instrument to be obtained or had, either on his first appointment or on any renewed or succeeding appointment to the said office, nor to any fee or gratuity for any matter or thing incident to the execution of his office, or for auditing or passing his accounts either in H. M.'s treasury, the office for taxes, or in any office of the court or receipt of exchequer.

Third. — Every receiver-general to be appointed as aforesaid shall execute the duties of the said office in person without any deputy or deputies, unless he shall be required or authorised, in cases of illness or other temporary or sufficient cause, to appoint a deputy or deputies with the approbation of the said commissioners of H. M.'s treasury, by the commissioners for the affairs of taxes. 3 G.4. c.88. Not to appoint a deputy without consent of treasury, and under the warrant of the tax-office.

Fourth. — Every receiver-general to be appointed as aforesaid shall attend at such places, and observe such route in proceeding from place to place, for the receipt of the said taxes from the several collectors of the parishes, wards, or places within the limits assigned to him, and at such times, and from time to time, as shall be settled with him, and approved by the commissioners for the affairs of taxes: Provided always, that it shall be lawful for the said commissioners of H. M.'s treasury, or any three or more of them, to allow every such receiver-general an allowance not exceeding 2*s.* per mile, and one guinea per day, for his travelling expenses when absent from home upon his quarterly or half-yearly receipt; and also a like allowance if travelling upon an extraordinary occasion, by the direction of the commissioners for the affairs of taxes: Provided also, that whenever the said commissioners of the treasury shall require any receiver-general to keep open an office daily or weekly, or on two or more days in each week, except *Sundays* and *Christmas Day*, for the receipt of the taxes of his district or any part thereof, it shall be lawful for the said commissioners of the treasury to assign an additional salary and allowance for the expenses incident to his said office, over and above the salary and allowance herein limited, to be paid out of the said taxes in manner hereinbefore directed: Provided always, that an account of the salaries, allowances, or other emoluments, in any manner accruing to the several receivers-general of the taxes under this act shall be annually laid before both houses of parliament within 20 days after the meeting thereof. Route for receipt of taxes. Allowances for travelling expences. When an office is required to be kept, an additional salary, &c. allowed.

Fifth. — It shall be lawful for the said commissioners of the treasury to contract or to authorise the said commissioners for the affairs of taxes to contract with any receiver-general, or any other person or persons, to remit the taxes collected and received, and paid to the receiver-general, or his deputy, authorised as aforesaid, to be by such person or persons paid, or caused to be paid, into the receipt of H. M.'s exchequer at *Westminster*, at such time or times, and in such manner as shall be specified in such contract; and also to contract in like manner with the same or any other person or persons, to receive from the collectors residing within the limits specified in their respective contracts all such taxes as shall remain in the hands of any collector or collectors, or shall have been collected by him or them since the last circuit of receipt of the receiver-general, or his deputy, or to be collected by any collector or collectors aforesaid, at any time or times in the same or succeeding quarter of the year after the last half-yearly circuit of receipt, by any receiver-general or his deputy upon such terms and conditions as shall be specified in such contracts respectively, of which contract or contracts the respective commissioners shall have notice, and from time to time shall make such order or orders for the payment of the monies from Treasury may authorise contracts with persons to receive and remit monies.

3 G.4. c.88.

time to time collected or received by the respective collectors aforesaid, as by this act is directed.

Receivers not remitting, to pay monies to the person appointed.

Sixth.—It shall be lawful for every receiver-general who shall not contract to remit the taxes by him received into the receipt of H. M.'s exchequer, under the regulations prescribed by the said commissioners of H. M.'s treasury, to pay over the same to such person or persons as shall be authorised as aforesaid to pay the same into the said receipt of exchequer, and who shall attend such receiver-general for that purpose; and the receipt of such authorised person or persons, in duplicate, shall be a full discharge and acquittance to such receiver-general: and the first of every receipt in duplicate so given shall be transmitted to the commissioners for the affairs of taxes; and the second of every such receipt shall remain with the said receiver-general as his voucher in passing his accounts; and every such receipt shall be free of stamp-duty.

Receivers keeping daily or weekly offices, may appoint particular days of receipt by collectors.

Seventh.—Whenever any receiver-general shall be required to keep open daily or weekly (except as before excepted) an office for the receipt of taxes within his district, it shall be lawful for such receiver-general, and he is hereby required, to fix the day or days for receiving the same from each collector whose place of residence shall be within ten miles of the said office, according to such course, order, and rotation as shall be approved by the commissioners for the affairs of taxes, or any three or more of them; according to which rotation every such collector shall attend to make his payment, so that each such collector may attend four or a less number of days in each quarter of a year, or quarterly, as the commissioners of the district shall think expedient, and shall certify to the commissioners for the affairs of taxes, according to the said course, order, and rotation; of which day or days of payment due notice shall be given to the respective commissioners acting in the execution of the said acts and this act; and where the residence of any collector or collectors within the district of any such receiver-general mentioned in this rule shall not be within the distance before mentioned, the receipts of the monies from time to time collected by them shall be held by the deputy of such receiver-general, in the manner prescribed in this act in regard to other districts.

Bonds, &c. to be to H.M.

Eighth.—All bonds, contracts, and securities to be entered into with or taken from the receivers-general to be appointed, or with or from any other person or persons to be appointed under this act, and their respective sureties, to remit the monies arising by the taxes granted by the said acts, or any of them, or any other duties or sums of money under the management of the commissioners for the affairs of taxes, shall be to H. M., his heirs and successors, and entered into with and taken by the commissioners for the affairs of taxes, and shall be filed and kept in the office of the said commissioners; and no such bond, contract, or security shall be entered or filed at any of the offices in the court of exchequer, unless and until it shall be necessary to be made matter of record for the purpose of suing process at law in the said court of exchequer at *Westminster*, for the recovery of any penalty forfeited thereon, or any debt or duty owing thereon, or against the person and effects of the parties bound thereby, their heirs, exe-

cutors, or administrators respectively; in which cases the commissioners for the affairs of taxes shall cause the same to be delivered into the office of the king's remembrancer of the said court; and such delivery shall be deemed and be as valid and effectual as if the bonds, contracts, and securities had been taken in one of the said offices, according to the course or practice of the said court heretofore used, to all intents and purposes whatsoever; and shall be applied and made use of in such and the like manner in any suit, action, or process of law on the said bonds, contracts, or securities, as if the same had been from the caption thereof respectively filed in the said court. 3 G.4. c.88.

No. II. — Rules and Regulations respecting the said Office, in relation to Assessed Taxes.

First. — Every receiver-general to be appointed as aforesaid, and his deputy or deputies, except as after mentioned, authorised under this act, shall and is hereby respectively empowered and authorised, at the respective times appointed by the said acts and this act for the delivery of schedules of defaulters, to administer an oath to every such collector, (or being a person called a Quaker, a solemn affirmation,) that he or they hath or have fully paid all the sums by him or them collected or received of or for the assessed taxes, and hath or have fully accounted for all sums not collected or received, in the schedule or schedules then delivered, and shall true answer make to all such questions as shall be demanded of him; and it shall be lawful for every receiver-general, or his deputy or deputies, authorised under this act, at the time of delivering such schedule or schedules, to examine each collector on any matters touching the sums collected, and the sums in arrear, and the substance of the answer or answers which any collector shall give on such examination shall in his presence be reduced into writing, and read to him, with liberty to alter and amend the same in any particular; and every such collector shall write or sign his assent to the same, in his own hand-writing or sign, and in his usual manner of writing or signing the same.

Receivers may examine collectors on oath.

Second. — Every collector residing within ten miles of an office for the daily or weekly receipt of the said taxes, to be established pursuant to this act, shall, once in every intervening quarter of a year, when required by the receiver-general of the district where such office shall be, account with the said receiver-general, and on his oath or affirmation be examined by such receiver-general, in the manner directed by the preceding rule, unless the accounts of the monies of the said taxes respectively received by such collector shall have been previously examined by the commissioners of the district, and the amount to be then paid to the receiver-general shall have been certified under their hands, and the certificate thereof delivered to the said receiver-general, as directed by this act.

Collectors to account quarterly.

Third. — It shall be lawful for every such receiver-general, or his authorised deputy, as aforesaid, whenever he shall see occasion, to report to the commissioners acting in the execution of the said acts and this act, in any matter or thing touching the conduct of any collector or collectors aforesaid; and in every case where there

Receivers may report failures, &c. of collectors.

3 G.4. c.88.

shall be a failure of assessing or charging the duties in any parish, ward, or place, parishes, wards, or places, or of raising or paying the several sums respectively charged on any person or persons chargeable in such parish, ward, or place, parishes, wards, or places, or in the making out or returning any duplicates of assessments by their clerk, or of doing any other act required by the acts relating to the said taxes, or by this act, to be done by such clerk, stating therein the particulars of his complaint against such collector or collectors, or other person or persons acting as aforesaid, and what in his opinion ought to be done therein; and whenever any receiver-general, or his authorised deputy, shall have reported to the commissioners acting for any parish, city, town, or place, or any ward or other division, any matter or thing which in the opinion of such receiver-general, or his authorised deputy aforesaid, shall require the particular consideration of the said commissioners, it shall be lawful for them, and they are hereby required to summon a meeting within a reasonable time after such report; of which meeting the receiver-general, or his authorised deputy aforesaid, shall have notice, and may and shall attend thereat, and assist in the consideration of the measures necessary and expedient to be taken in the execution of the said acts and this act.

No. III. — Rules and Regulations respecting the Office of Collector of Assessed Taxes.

Collectors to produce assessments to receivers, showing sums collected.

First. — At each quarterly or half-yearly receipt of any receiver-general as herein mentioned, to be held next after the 10th day of *October* and the 5th day of *April* in each year, pursuant to the directions of this act, all and every the collectors and collector of the assessed taxes, or the monies arising by compositions for assessed taxes, within the jurisdiction of such receiver-general, shall bring with him and produce to the receiver-general or his deputy the duplicate or duplicates of assessment, showing the respective sums by them or him collected and received duly written off in the said duplicate or duplicates, or instead thereof, a certificate signed by two or more of the commissioners of the district, stating the several sums collected and received, and the sums to be paid to the receiver-general or his deputy at the ensuing receipt, together with a full and true account, in writing, signed by such collectors or collector, in their or his usual manner of writing or signing their or his christian and surnames or name, of all sums of money by them or him collected for that year of assessment, and on his oath or solemn affirmation aforesaid, true answer make to all such lawful questions as the said receiver-general or his deputy shall there demand of them or him touching the assessed taxes; and if any collector of the assessed taxes shall at any such half-yearly receipt neglect or refuse to bring with him and produce such duplicate or duplicates of assessment, showing the respective sums collected or received in manner aforesaid, or instead thereof a certificate, signed by the commissioners of the district aforesaid, together with an account in writing, signed by such collector in manner before directed, or shall refuse to take the oath or affirmation aforesaid, or to answer any lawful question

or questions demanded of him by such receiver-general, or deputy authorised as aforesaid, or shall declare, in any answer by him made, any matter or thing which shall be false, every such collector shall forfeit and pay the sum of *50l.*, to be sued for and recovered as any penalty may be sued for or recovered under the acts relating to the said taxes or any of them, together with all costs and charges attending the recovery thereof. 3 G.4. c.88.

Penalties on collectors not paying over monies.

Second. — Whenever any sum or sums of the monies collected and received under the authority of the said acts shall be detained in the hands of any collector or collectors, and shall not be duly accounted for to the receiver-general or his deputy at the receipt to be holden next after the same shall have been collected or received by him or them; and whenever any sum or sums of the arrears of taxes and monies so collected or received shall be ordered to be paid by the respective commissioners of the district acting in the execution of this act, and shall not be paid on the day so ordered, every such collector shall forfeit and pay the sum of *50l.*, and a further penalty at the rate of *5l. per centum per annum* for the whole sum by him detained; and the amount of the said penalties shall be sued for and recovered in the manner hereinbefore directed, with all costs and charges.

Penalty on collectors using public money.

Third. — If any collector of the said taxes shall from and after the passing of this act advance or lend to any person or persons any of the monies so by him collected or received, or if any such collector shall pay or apply any monies, or any part of the said monies, to his own use or purpose, or shall deposit or deliver over the same to any other person or persons, so that the full sums or any part thereof to be raised under the said acts, according to the tenor and effect thereof, shall be withheld and not be paid to the receiver-general at the times on which the same ought to be paid according to this act, every such collector shall for every such offence forfeit and pay the sum of *50l.*, with all costs and charges, to be recovered in manner last aforesaid.

Schedules of defaulters to be delivered by collectors to receivers-general.

Fourth. — All schedules of defaulters to be delivered after the passing of this act, by any collector or collectors of the said taxes, and composition-monies, or any of them, shall be delivered to the several receivers-general, or their authorised deputies, on their receipt, after the 10th day of *October* and the 5th day of *April*, yearly; and at the time of such collector or collectors attending the receiver-general with an affidavit subscribed on the oath or affirmation of the collector or collectors in the manner directed by the said acts, and which oath or affirmation the said receiver-general, or their respective authorised deputies, are hereby respectively authorised to administer and subscribe; and any collector neglecting to deliver any such schedule, duly verified as aforesaid, to such receiver-general or his deputy at the time, and on his receipt as aforesaid, shall be subject to the like process as is provided for neglecting to deliver schedules under the said acts relating to the assessed taxes; and all such schedules respectively shall be delivered by such receiver-general or his deputy, to the respective commissioners, to remain in their hands during the same time as is allowed by the said acts relating to assessed taxes.

Bond given by collector to be free from duty.

Fifth. — Every bond or other security to be given after the passing of this act, by the collector or collectors of the land-tax,

3 G.4. c.88.

to the respective commissioners acting in the execution of the act relating to the said tax, shall be free of any stamp-duty whatever.

Poundage to collectors.

Sixth.—Every collector shall receive from the receiver-general the poundage allowed to him under the said recited acts, unless the said commissioners of H. M.'s treasury shall direct all or any portion of such poundage to be discontinued, and which the said commissioners are hereby authorised to do from time to time, and in such manner as shall appear to them expedient for the better execution of the provisions of this act.

No. IV.—Rules and Regulations respecting the Offices of other Persons acting in the Execution of the said Acts.

Authorising the commissioners to call the collectors before them previous to each receipt, and make orders for subsequent payments.

First.—It shall be lawful for the several commissioners acting in the execution of the said recited acts and of this act, in their respective divisions, and they are hereby required, whenever they shall have received notice, as directed by this act, of any receipt to be holden by the receiver-general of the monies collected and received within the limits of the district of the said commissioners respectively, and on or immediately before the day or days of receipt to be so holden, to call before them the respective collectors appointed for each parish or place, and to examine him or them upon solemn oath or affirmation, and assure themselves of all and every of the sum or sums of money, and arrears of the said duties and compositions respectively, that shall have been collected, or remain to be collected, and which shall be payable to the said receiver-general or his deputy, or such other person or persons as shall be authorised to receive the same under this act, at such ensuing receipt, and to make such order therein for the payment of the same to the receiver-general or his deputy, or other person or persons aforesaid, as they shall judge necessary; and the said commissioners shall thereupon cause to be delivered to every such collector a certificate of the sum to be so paid to the said receiver-general or his deputy, or other person or persons aforesaid, together with their order for the payment of such sum or sums as aforesaid, under the hands of the said commissioners, or any two of them, and which certificate shall be delivered by every such collector to the receiver-general or his deputy, or other person or persons aforesaid, at the time of his attending to make such payment of the monies by him collected and received; and the said commissioners shall enter every such certificate and order in a book, to be by them provided for that purpose; and it shall be lawful for the inspector and surveyor acting for the district of the said commissioners, at all convenient times to inspect the said book, and take such extracts therefrom as shall be required by the said commissioners for the affairs of taxes.

Books of assessments.

Second.—Whenever the respective commissioners shall have signed and allowed any assessment of assessed taxes, and the days to be appointed for hearing appeals therefrom shall have elapsed, the clerk to the said commissioners shall cause to be numbered the pages in each book of assessment, and the sums assessed in each page to be duly cast up; and they shall forthwith, and before the next ensuing receipt for the said taxes, transmit to the receiver-general of the district or his deputy the total amount of the sum

to be paid to such receiver-general by and for each parish, ward, or place in the respective districts, together with the names of the collectors appointed to collect and receive the same. 3 G.4. c.88.

§ 3. Enacts, that if any collector or collectors of the said duties and sums of money aforesaid, or any of them, shall neglect or refuse to pay any sum or sums of money which shall be by him or them received as aforesaid, as in and by the said several acts or by this act is directed, and shall detain in his or their hands any money received by him or them, and not pay or account for the same in manner directed by the said acts or this act, the commissioners acting in the execution of the acts relating to the said duties, or any two or more of them, in their respective districts, are hereby authorised and empowered to imprison the person, and seize and secure the estate, as well freehold as copyhold, and all other estate, both real and personal, of such collector or collectors, to him or them belonging, or which shall have descended or come into the hands or possession of his or their heirs, executors, administrators, or assigns, wheresoever the same can be discovered and found; and the said commissioners who shall so seize and secure the estate of any collector or collectors, or any two or more of the commissioners acting as aforesaid in the same district, shall and are hereby empowered to appoint a time for a meeting of the commissioners for such division, city, town, or place, and then to cause public notice to be given of the place where such meeting shall be appointed, ten days at least before such meeting; and the commissioners of such division, city, town, or place, present at such meeting, or the major part of them, in case the accounts of such collector be not duly delivered, or the monies detained by any such collector or collectors be not paid or satisfied, as ought to be done according to the directions of the said acts or of this act, shall be and are hereby empowered and required to sell and dispose of all such estates which shall be, for the cause aforesaid, seized and secured, or any part of them, to satisfy and pay into the hands of the receiver-general the sum that shall not be so accounted for, or shall be so detained in the hands of such collector or collectors, their heirs, executors, or administrators respectively, together with the reasonable costs and charges of recovering, raising, and paying the same, which costs and charges shall be ascertained and settled by the said commissioners, and the overplus (if any) shall be restored to the collector or collectors, or the person or persons entitled thereto.

Commissioners empowered to seize and sell the estates of collectors making default.

§ 4. Enacts, that any two or more of the commissioners acting for the division in which the estate and effects of such collector or collectors shall be seized and secured as aforesaid, shall be and are hereby authorised and required to make conveyance of all such freehold and copyhold estates respectively; and in like manner to assign the leasehold and other personal estate of such collector, and all his right, title, and interest therein at the time of such seizure, or at the time of the death of any collector so dying in default as aforesaid, to the respective purchasers thereof respectively, by deed indented between any two or more of the said commissioners; and such sales and purchases respectively shall be as effectual and valid, to all intents and purposes, against such collector, his heirs, executors, and administrators, and all persons

Commissioners may convey the estates so sold.

3 G.4. c.88.

claiming under such collector, in like manner as the sale of bankrupts' estates of the like nature, under and by virtue of the statute relating to bankrupts, or any of them, may be made by deed indented or enrolled, or by deed of assignment, according to the several natures of such last-mentioned estates: Provided always, that such person or persons to whom any such sale of copyhold lands shall be made, shall in like manner as the purchaser of the copyhold estates of bankrupts, before such time as he or they, or any of them, shall enter or take any profit of the said lands or tenements, agree and compound with the lords of the manors of whom the same shall be holden, for such fines or incomes as heretofore hath been most usual and accustomed to be yielded or paid therefore; and that upon every such agreement or composition the said lords for the time being, at the next court to be holden at or for the said manors, shall not only grant to the said vendee or vendees, upon request, the same copyhold or customary lands or tenements by copy of court-roll of the same manors, for such estate or interest as to them shall be so sold, and reserving the ancient rents, customs, and services, but also in the same court admit them tenants of the same copyhold or customary lands, as other copyholders of the same manors have been wont to be admitted, and to receive their fealty, suit, or service, according to the custom of the court of such manor.

Commissioners of assessed taxes and land-tax to be commissioners to execute the act.

§ 5. Enacts, that the several and respective persons who for the time being shall be commissioners for putting in execution the acts relating to assessed taxes and to the land-tax respectively, shall be commissioners for putting in execution this act, and the powers herein referred to or contained, in all and every the respective counties, ridings, divisions, shires, and stewartries, cities, boroughs, cinque ports, towns, and places in *G. B.*; and the several collectors, surveyors, inspectors, and inspectors-general for the time being, appointed or to be appointed to put into execution the said acts, shall respectively be collectors, surveyors, inspectors, and inspectors-general, to put in execution this act, within the limits of their respective divisions, districts, and places, to which they are or shall be appointed; and the said commissioners and others before mentioned are hereby empowered and required to do and perform all things necessary for putting this act in execution, in the like and in as full and ample a manner as they or any of them are or is authorised to put in execution the said acts, and all and every the powers and authorities, methods, rules, directions, penalties, forfeitures, clauses, matters, and things, contained in any of the said acts, (except where such provisions are varied, or other provisions are substituted by this act,) shall, in collecting, levying, and accounting for the said duties and monies respectively, be severally and respectively duly observed, practised, and put in execution throughout *G. B.*, in relation to all and every the duties and monies aforesaid, as fully and effectually, to all intents and purposes, as if the same powers, authorities, &c. &c. were particularly repeated and re-enacted in the body of this act, and applied to all and every such duties and monies aforesaid, as part of the provisions of this act.

Appointment of clerk to the

§ 6. After the 25th *March*, 1822, every appointment of clerk to the commissioners for executing the acts relating to the land-tax

shall be made for the term and under the rules and regulations for the appointment, continuance, and removal of a clerk to the commissioners for executing the acts relating to the assessed taxes, as is provided by stat. 43 *G.* 3. *c.* 99. 3 G.4. c.88. land-tax to be under the provisions of the assessed tax-acts.

§ 7. And whereas the delay of enrolling and passing declared accounts of receivers-general of the land and assessed taxes through the different offices in the court of exchequer, previous to the issuing the *quietus* thereon, is attended with great inconvenience to such receivers-general, and to their securities, in obtaining the cancellation of their bonds to H. M., from time to time, as they become satisfied, for the year or years on which such declared accounts are balanced in the office of the auditor or auditors of the land-revenue, in the usual course of passing such accounts; it is enacted, that after the passing this act, in every case where any account of a receiver-general of land or assessed taxes, to which any bond now or hereafter to be entered into to H. M., filed of record in the court of exchequer, or to be taken by the commissioners for the affairs of taxes under the provisions of this act, shall relate, has been or shall be stated and passed in the office of the said auditors, or their deputy, and have been or shall be declared before a baron of the court of exchequer, and no balance shall appear to remain due on such account from any such receiver-general, the said auditors or their deputy shall, as soon as conveniently may be after such declaration, cause a certificate thereof to be made out, and signed by them or him, and the total amount of the sums forming the charge and discharge parts of the said account, with the words "*Even and Quit,*" shall be inserted in such certificate, and delivered to the said receiver-general; and every such certificate so made out and signed as aforesaid, and delivered into or lodged by the said receiver-general in the office of the king's remembrancer in the court of exchequer, or in the office of the said commissoners, shall be a sufficient authority to the officers of the said court and to the said commissioners having the custody of the bond of the said receiver-general, for the year to which the said certificate shall relate, to deliver up such bond to the said receiver-general, or to his authorised agent in that behalf, a receipt for such bond being endorsed on such certificate, and signed by the party receiving the same. Providing for delivering up of bonds of receivers-general on accounts being balanced.

§ 8. And whereas it is expedient, in the several counties in *England* and *Wales*, where two or more persons execute the said office of receiver-general, to abolish one of such offices; it is enacted, that upon the death, resignation, or removal of any one of the receivers-general whose names are set forth in the schedule to this act annexed, marked with the letter A., the office of such receiver-general shall be discontinued, and it shall be lawful for the said commissioners of the treasury to consolidate the said vacant office with the office of the receiver or receivers of the rest of the county, or to add the same or any part or parts thereof to any adjoining district or districts of receipt, as the said commissioners of the treasury shall think most beneficial to the collection of the said taxes. For discontinuing the office of certain receivers-general on death, resignation, or removal of the present receivers.

§ 9. Enacts, that after the passing of this act, one part only of the accounts of every receiver-general to be hereafter passed shall be made up and transcribed in the offices of the auditors of the Regulation for enrolling the accounts of re-

3 G.4. c.88.

ceivers-general in the king's remembrancer's office only.

said accounts, for the purpose of being presented for declaration before a baron of H. M.'s court of exchequer, and which accounts shall be written on paper in the *English* language in common characters, and the several sums of money expressed therein shall be written and described in common numerals or figures; and every such account, after the same shall have been declared before a baron of the said court according to the usage thereof, shall be transmitted to the office of H.M.'s remembrancer of the said court, and shall there be enrolled, as of record, in like manner in all respects as the part of any account transcribed on parchment hath heretofore been enrolled; and which enrolment herein directed shall be as valid and effectual for enabling the proceedings for the recovery of any balance and interest due or to become due thereon, and for all other purposes whatsoever in anywise concerning or relating to such accounts, as if the same had been also recorded in the offices of the lord treasurer's remembrancer and of the clerk of the pipe, according to the course of the exchequer before the passing of this act: Provided nevertheless, and all and every the provisions contained in stat. 1 & 2 *G.* 4. *c.* 121., so far as the same relate to the record and enrolment of any of the said accounts in the offices of the lord treasurer's remembrancer and of the clerk of the pipe respectively, in cases where such enrolments or records may be found necessary for the purposes in the said acts mentioned; and also so far as the provisions of the said acts relate to allowing compensation to the persons now holding the said offices of the lord treasurer's remembrancer and clerk of the pipe, for loss of fees or proportions of fees, in respect of inrolments of the receivers accounts in the said last-mentioned offices, and of the effect of such inrolments; and also in respect of compensation to the said officers, and to the king's remembrancer and other officers of the court of exchequer, for loss of fees or proportions of fees which they shall respectively sustain under the provisions of this act, shall and may be severally observed, practised, and followed, and applied to the provisions of this act, and in the execution thereof, to all intents as if the said several provisions of the said last-mentioned act had been re-enacted and incorporated in the body of this act, and particularly applied to the provisions of this act.

But such accounts may be enrolled in the lord treasurer's remembrancer's office, and the pipe-office, in particular cases, as required by 1 & 2 G.4. c.121.

Compensation to officers of the exchequer for loss of fees.

Receiver-general not required to travel in company with more than one person on each receipt.

§ 10. And whereas by the said acts relating to the land and assessed taxes respectively the receivers-general of the said duties, and their agents or servants, are required to travel together, three in company at the least, on their respective receipts, and for the purposes in the said acts mentioned; it is enacted, that no receiver-general, or his authorised deputy, to be appointed under the provisions of this act, shall be required to travel in company with more than one person on each receipt respectively; and such receiver-general, or his authorised deputy so travelling as last aforesaid, shall have the same remedies and advantages in his protection on his said receipt, to all intents, as if he had travelled in company with two or more persons, in the manner directed by the said acts.

Schedule (A.) referred to by Stat. 3 *G.* 4. *c.* 88.

Berks -	W. B. Simonds.	Norfolk - -	W. Fisher.
	E. Golding.	Northampton and	
Bucks -	G. R. Minshull.	Rutland -	E. Boodle.
	W. H. Hanmer.		John Beauclerk.
Devon -	J. J. Fortescue.	Somerset -	J. Allen.
	Sir J. Duntze.		Hon. G. Poulett.
York -	R. R. Milnes.	Isle of Wight	W. Hearn.
	R. Creyke.	Suffolk - -	O. R. Oakes.
Essex -	R. Andrews.		D. E. Davy.
	C. Round.	Surrey - -	R. Smith.
Kent -	Sir Wm. Twysden.		T. Page.
	G. W. H. D'Aeth.	Warwick -	W. Little.
Lancaster	G. Case.		C. Fetherston.
	E. Falkner.	Wilts - -	W. Bowles.
Lincoln -	Sir R. Fydell.		J. Awdry.
	R. Claypon.	Monmouth -	R. Lascelles.
Norfolk -	Sir R. J. Harvey.	Glamorgan -	H. Hollier.

(7.) General Provisions for enforcing and facilitating the Execution of this Act.

By stat. 43 *G.* 3. *c.* 99. § 19. No commissioner, assessor, or collector, acting under this or any acts herein mentioned, shall be liable to any other penalties but those which are contained herein.

Officers executing this act, &c. to be liable only to the penalties hereof.

§ 35. When any persons remove to other parishes without first paying the duties, the commissioners shall certify the same to the commissioners of the parish where the party may reside; any two or more of whom shall cause the amount thereof to be levied, and to be paid to the collector of the parish whence the parties removed.

Proceedings where persons remove without paying the duties.

§ 36. Where parishes or places are in two counties, the duties charged thereon shall be assessed in the county where the church is situate; and where houses are situated in two parishes, the whole of the duties shall be charged in one: and the party so charged shall be relieved from any second assessment thereon, as in other cases of double assessments.

Where parishes lie in two counties, or houses in two parishes.

§ 37. No goods whatever, belonging to any persons at the time the duties became in arrear, shall be liable to be taken by virtue of any execution or other process, warrant or authority, or by virtue of any assignment, on any pretence whatever, except at the suit of the landlord for rent, unless the party at whose suit the said execution or seizure shall be sued out, or made, or to whom such assignment shall be made, shall, before sale or removal of such goods, pay or cause to be paid, the arrears of duties due at the time of seizing, or payable for the year in which such seizure shall be made, provided they be not claimed for more than one year: and in case of refusal to pay the duties, the collectors may distrain and sell the goods, in order to obtain payment of the duties assessed, together with the costs attending such distress and sale; for which proceeding every collector, thus acting, is hereby indemnified.

No goods to be taken by virtue of any process except at the suit of the landlord for rent.

§ 38. All the provisions, remedies, and powers which by any act concerning bankrupts, or recovering rent in arrear, are in force, given to creditors, lessors, or landlords, and all the powers

Powers of 27 G. 2. c. 20. & 33 G. 3. c. 55.

43 G. 3. c. 99. — applicable to the commissioners.

of stats. 27 *G.* 2. *c.* 20. and 33 *G.* 3. *c.* 55. shall be used and practised by the respective commissioners, and by any inspector, surveyor, or collector acting under their authority, for recovering arrears of duties, beside the remedies and powers hereby provided.

59 G. 3. c. 118. Not liable to assessment after the 5th April which shall next happen after bankruptcy or insolvency, for articles kept and used for trade. Not to affect payment made by assignees.

But by stat. 59 *G.* 3. *c.* 118. § 1. it is enacted, that no person or persons becoming, or who shall have become bankrupt or insolvent, shall be liable to be assessed to the duties of assessed taxes, after the 5th of *April* next after the time of such bankruptcy or insolvency, in respect of any article or articles kept and used for the purposes of trade, at or before the time of such bankruptcy or insolvency, which article or articles shall have been seized or surrendered, and *bonâ fide* sold under or by virtue of such bankruptcy or insolvency, and not kept or used by such bankrupt or insolvent, after the 5th day of *April* next after such bankruptcy or insolvency: Provided that nothing herein contained shall be construed to effect the payment by the assignee or assignees of every such bankrupt or insolvent, and such assignee or assignees shall pay the duties assessed on every such bankrupt or insolvent, at the time of such bankruptcy or insolvency, up to the 5th day of *April* next after the same shall have happened, as if this act had not been made.

43 G. 3. c. 99. Constables, &c. to aid and assist in the execution of this act.

By stat. 43 *G.* 3. *c.* 99. § 59. All constables, headboroughs, tythingmen, and other officers, shall aid and assist in the execution of this act, and of every act for granting duties to be assessed under this act, and obey and execute such precepts and warrants as shall be to them directed in that behalf by any two or more of the respective commissioners hereby appointed.

Penalty on persons obstructing officers.

§ 60. And if any person shall wilfully obstruct any assessor, collector, surveyor, or inspector, in the due execution of his office or duty, he shall, for every offence, forfeit 50*l.*

Officers to follow such instructions as they shall receive from the commissioners of the treasury.

§ 61. And the receivers-general, their deputies, surveyors, inspectors, and all other persons employed in executing any acts for granting duties to be assessed under the regulations hereof, shall follow such directions as they shall receive from any three or more of the commissioners of the treasury.

All books, &c. relating to the duties to be the property of the commissioners.

§ 67. All minute and other books and papers relative to the duties shall be the property of the commissioners of the districts for the time being and in succession, as records; and shall be deposited with such persons as any two or more of the commissioners shall from time to time appoint.

Penalty on persons refusing to deliver up such papers on commissioners' order.

§ 68. All persons having any such books or papers in their possession or custody shall, within one calendar month, after notice in writing signed by three or more commissioners, (a true copy thereof being left at their usual place of abode,) deliver up the same to the persons appointed by the commissioners (whose receipt shall be a sufficient discharge to the parties so giving up the same), on pain of forfeiting 50*l.* And the persons receiving the same shall deliver them to such of the commissioners for executing this act as the commissioners of taxes shall direct.

(8.) Recovery and Application of Penalties.

Application of penalties sued

§ 62. One moiety of all pecuniary penalties and forfeitures imposed hereby, or by any act for granting duties to be assessed

under the regulations hereof may, if sued for within 12 calendar months from the time of their being incurred, in manner herein next mentioned, be to the king, and the other moiety thereof, with full costs of suit, to the informer or person suing within the time aforesaid, except where any penalty is or shall be directed to be paid to the poor of any parish; and all such penalties may be sued for in the exchequer at *Westminster*, for offences committed in *England* or *Berwick-upon-Tweed*, or in the courts of great sessions in *Wales*, for offences committed in *Wales*; but the attorney-general, in case it shall appear to his satisfaction that any penalty was incurred without intention of fraud, may stay all further proceedings in such suits by entering a *noli prosequi*, or otherwise.

43 G.3. c.99.

for within 12 months.

§ 63. But any such penalty or forfeiture shall be recoverable in the name of the attorney-general, on the part of H. M., by information in the exchequer at *Westminster*; and in default of prosecution within the time limited, no such penalty shall be afterwards recoverable in any other manner; in all which cases, (except where the same is directed to be paid to the poor of the parish or place,) the whole of the penalty shall belong to the king; and all penalties and shares of penalties incurred as aforesaid, belonging to H. M., shall be paid into the hands of the proper receiver-general or his deputy to H. M.'s use; and in all cases where the whole of such penalty shall be recovered for H. M.'s use, the commissioners of taxes may cause such reward as they shall think fit, not exceeding one moiety, after deducting all the charges incurred of recovering the same, to be paid thereout to any informer who shall be entitled thereto.

Recovery and application of penalties not sued for within 12 months.

§ 64. All pecuniary penalties, not exceeding 20*l.*, may be recoverable before any two or more commissioners for executing this act; and also penalties exceeding that amount, if directed to be added to the assessments. And such commissioners shall take cognisance of such offence, upon information or complaint in writing made to them, and upon a summons to the party accused to appear before them at such time and place as they shall fix, or without such summons in case the party shall have been surcharged before them, and shall have appealed against the same, and shall appear upon such appeal before the said commissioners; and such commissioners shall examine into the matter, and determine the same in a summary way; and upon proof made thereof, either by voluntary confession of the party accused, or by oath or affirmation of one or more credible witnesses, or otherwise as the case may require, shall give judgment for the penalty, or for such part thereof to which the commissioners shall think proper to mitigate the same, not being in any case less than one moiety; and shall assess the same upon the party, and charge the same in the assessment to which the penalty adjudged shall particularly relate, and in addition to the duty, in case the party shall be charged therewith; which penalties so adjudged shall be levied in like manner as the said duties: and the informer shall in all such cases (except where the penalty is to be paid to the poor of any parish or place, in which case the receiver-general shall pay the same either to the churchwardens or to the overseers,) be entitled to receive from the receiver-general one moiety of the amount of such penalties, in such shares, where two or more of them are

Penalties not exceeding 20*l.* recoverable before the commissioners.

43 G.3. c.99.

No appeal.

concerned, as the commissioners for executing this act shall certify to the commissioners of taxes they are respectively entitled unto; and the adjudication of the commissioners shall be final and conclusive, without power of appealing from the same.

Proceedings of commissioners not to be subject to revision, except in certain cases.

§ 64. And the proceedings of the commissioners shall not be removeable by any process whatever into any court of law or equity, or be subject to revision, except where a surcharge shall be made, and a case shall be demanded and stated for the opinion of one of the justices or barons of the superior courts, conformably to the directions contained in any act or acts granting the duties to which such surcharges shall relate.

Penalty on persons giving false evidence.

§ 65, 66. Persons giving false evidence before commissioners shall be liable to the punishments for perjury. And any indictment for perjury, committed in any examination before them, shall be tried in the courts where the deposition shall be exhibited.

Commissioners acting under this act not liable to the penalties in the 25 C.2.

§ 69. But commissioners acting in the execution hereof, or of any act for granting duties to be assessed under the regulation hereof, shall not be liable by reason of such execution, to any of the penalties mentioned in stat. 25 *Car.* 2. *c.* 2. § 69.

§ 70. Relates to the limitation of actions: which must be commenced within six calendar months after the fact committed.

Actions brought against collectors to be defended by the commissioners of the district.

§ 70. And every such action which shall be brought against any collector under this act shall be defended by the commissioners of the place where such collector shall have been appointed; and the costs attending the same, as also any other action to be brought by or against commissioners or collectors in pursuance hereof, or for any thing done in pursuance of this act, or any act for granting duties to be assessed hereunder, shall be defrayed by an assessment made on the parish or place for which such collectors shall have been appointed, in a just proportion to the amount of the duties payable under this act, on the respective persons charged to the same in the assessment to be made next after the time when the said costs and charges shall have been incurred.

A.

A. Form of the Oath required to be taken by Commissioners, before they act in the Execution of this Act.

I A. B. *do swear, that I will truly, faithfully, impartially, and honestly, according to the best of my skill and knowledge, execute the several powers and authorities reposed in me as a commissioner, by an act, passed in the forty-third year of the reign of his* [*late*] *majesty king* George *the third, intituled,* An act [here insert the title of this act] (*a*), *or by any other act or acts, granting to his majesty any duties to be assessed under the regulations of the said act, and that I will judge and determine upon all appeals, and all other matters and things which shall be brought before me as a com-*

(*a*) "An act for consolidating certain of the provisions contained in any act or acts relating to the duties under the management of the commissioners for the affairs of taxes, and for amending the same."

missioner under the said acts, or any of them, without favour or affection. So help me God.

B. Form of the Oath or Affirmation required to be taken by Assessors, before they act in Execution of this Act. B.

I A. B. *do swear,* [or, *affirm,* as the case may require,] *that I will diligently execute the office of an assessor, to which I am appointed by authority of an act, passed in the forty-third year of the reign of his* [*late*] *majesty king* George *the third, intituled,* An act [here insert the title of this act], *and that in the assessment which I am required to make by any other act or acts, granting to his majesty any duties to be assessed under the regulations of the said act, I will faithfully and honestly act without favour or affection, according to the best of my skill and knowledge.*

So help me God.

§ II. Of the Acts regulating the Assessment and Collection.

[48 G. 3. c. 141.—50 *G.* 3. c. 105.]

These enactments being chiefly matters of regulation, it is thought best to place them in a separate section for more easy reference: and

1. *Of the Appointment of Assessors; and when Collectors shall act in their Place.*
2. *Of Service of* Notices.
3. *Of Certificates of Assessment and Estimates.*
4. *Of Surcharges.*
5. *Of accounting for Duties received.*
6. *Of the Inspectors General.*

48 G.3. c.141. Assessors to be appointed, and duties to be assessed according to the rules.

By stat. 48 *G.* 3. *c.* 141. It is enacted, that from the period appointed for the commencement of the rules contained in this clause, all appointments of assessors shall be made, and also all notices required to be affixed on any place, or to be delivered to or served on any person or persons for the purpose of returning or estimating the duties [under the management of the commissioners for the affairs of taxes in *G. B.*], shall be affixed, delivered, or served; and all assessments of the said duties, or any of them, shall be returned, estimated, ascertained, and made; and the said duties shall be collected, levied, paid over, and accounted for, under and subject to the following rules and directions, which shall be deemed a part of this act, as if the said rules and directions had severally and respectively been inserted herein under a special enactment.

48 G.3. c.141. **No. I. — Rules and Directions for appointing Assessors of the Duties under the Management of the Commissioners for the Affairs of Taxes, after the Expiration of the Year 1808.**

Assessors to be appointed before the 6th of April yearly.

1st. It shall be lawful for the respective commissioners acting in the execution of the several acts relating to the said duties, and they are hereby required, to appoint assessors for each parish, ward, and place within their respective divisions, before the commencement of each year for which such appointment shall be made, and to do and complete all acts necessary to such appointment, so that the assessors to be appointed may enter on their office *on the sixth day of* April *in each year*, pursuing, in all other respects, the directions contained in the said acts in relation to such appointments; which appointments shall be and continue for and during the year to commence on that day, and until other assessors shall be appointed for the same parishes, wards, and places.

In default of such appointment, assessors for former years to act.

2d. In and for every parish, ward, or place, wherein asssessors shall not be appointed *before the sixth day of* April *in each year*, to serve for the year ensuing as aforesaid, the last appointment of assessors for the same parish, &c. (whether such appointment shall have been or shall be made under any of the acts in force at the time of passing this act, or under this act,) shall continue in force until other assessors shall be appointed for the same parish, &c. and for the same duties respectively, according to the directions of the said acts.

In certain cases the collectors of former years to act.

3d. In case the assessor or assessors appointed for any former year shall be dead, or be removed from, or be otherwise unfit or incapable to act for the parish, ward, or place for which he or they shall have been appointed, and in default of such appointment of assessors for the year ensuing for the same parish, ward, or place, in every such case the last appointment of a collector or collectors of the same duties for such parish, ward, or place, (whether such appointment shall have been or shall be made under any of the acts in force at the time of passing this act, or under this act,) shall continue in force until assessors shall be appointed for the same parish, ward, or place, according to the directions of the said acts; and every such collector shall, in every such case, during such continuance in his office of collector, do, perform, and execute all such matters and things as are directed by the said acts or this act to be done, performed, or executed by assessors; and all parts of the said acts or this act relating to and applied to assessors, shall in every such case be construed as applicable to, and be in like manner, and to the like intent, applied to such collectors; and the powers contained in the said acts or this act shall be as fully and amply exercised and practised by such collectors, as if the same powers had been expressly given to the said collectors by the said acts or this act.

Liable to penalties for refusing to act.

4th. All penalties imposed by any of the acts in force at the time of passing this act, on assessors, for refusing or neglecting to take upon themselves the office of assessor, or to perform their duty therein as prescribed by the said acts, shall be in the like cases imposed on assessors appointed according to this act, for neglecting to take upon themselves the office of assessor, or to perform their duty as prescribed by this act; and every such col-

lector as aforesaid, on whom the duty of assessor shall have devolved in pursuance of this act, shall be subject and liable to the like penalties for the like neglect of duty. 48 G.3. c.141.

5th. In every parish, ward, or place, where assessors shall not be appointed in pursuance of this act, or being appointed shall not have taken upon themselves the office on or before the commencement of the ensuing year, or where the assessors or collectors for any former year on whom the duty of assessor shall have devolved, shall not have taken upon themselves the office of assessor on or before the commencement of such ensuing year, it shall be lawful for the surveyor of the district, and he is hereby required to execute the duty of assessor for such parish, ward, or place, until assessors shall be appointed, who shall duly take upon themselves the said office. In certain cases surveyor to act.

6th. In every notice of continuance in office of any assessor or collector, the respective commissioners who shall cause such notice to be given shall require the attendance of such assessor or collector on a day and at a place within the division to be named in such appointment or notice, then and there to receive and take charge of all such notices and papers as shall be delivered to them respectively, for the due execution of the said acts, in manner hereinafter mentioned, *which day shall not be later than seven days after the fifth day of* April *in each year;* and in default of such notice being given by such commissioners, it shall be lawful for the inspector or surveyor of the district to give such notice, and to require the attendance of such assessors or collectors on a day and at a place within the division to be named by the said inspector or surveyor for that purpose. Commissioners to give notice of continuance in office.

No. II. — Rules and Directions for Service of Notices to Persons liable to be charged to the said Duties, or any of them.

1st. All notices relating to any of the said duties, requiring to be affixed on any place, or to be delivered to or otherwise served on any person or persons for the purpose of returning the said duties, shall be delivered by the respective surveyors of the districts in which such notices are required (or by the inspectors for the same districts, or by any other inspectors or surveyors of the same duties, duly authorized to take charge of such districts respectively, by or under the commissioners for the affairs of taxes, or any three or more of them,) to the respective assessors appointed or acting in pursuance of this act, or to the respective collectors on whom the duty of assessor shall have devolved as aforesaid, for the purpose of serving the same on the respective persons liable to the said duties, in the manner required by the said acts. 48 G.3. c.141. Surveyor to deliver notice-papers to assessors.

2d. All such notices shall be delivered to such assessors or collectors as aforesaid on or as soon *after the sixth day of* April *in each year as the same can be done;* and the delivery of such notices by such inspectors or surveyors, or any of them, shall be as effectual as if the same had been delivered by the commissioners of the division according to the directions of the said acts. Time of delivery.

3d. The said assessors and collectors respectively are hereby required to observe such directions as may from time to time be given to them by the said inspectors and surveyors, in all matters Assessors and collectors to observe the di-

48 G.3. c.141.

rections of the inspectors and surveyors respecting notices.

touching the time and manner of fixing or delivering or otherwise serving such notices, and the persons on whom the same are to be served, such directions having been previously seen and allowed by the commissioners acting for the division in which the said inspector or surveyor shall act.

No. III. — Rules and Directions for making and returning the Certificates of Assessment by Assessors acting under the said Acts, and for making and collecting the First Assessments in each Year.

Time of delivering certificates of assessment.

1st. The assessors shall deliver their certificates to the respective commissioners on or before the day which such commissioners shall appoint for that purpose, yearly, which day so to be appointed for the delivery of the certificates of assessment of the duties of assessed taxes shall *not be later than the twentieth day of* June *in each year* of assessment; on which day the assessor shall also deliver to the commissioners all the returns or statements relative to the said duties made to the said assessors before the day so appointed; and all the returns and statements made by the parties to be charged, which shall be delivered after that day, shall be delivered to the commissioners.

For making assessments in default of return.

2d. In all cases relating to the duties of assessed taxes, where the assessor or assessors shall not have received any return from any person or persons liable to be charged to the said duties, it shall be lawful for such assessor or assessors, and he and they is and are hereby required to make a true assessment on such person or persons, to the best of his or their information and judgment, of the real charge which ought to be imposed.

First assessment to be made without including matters of surcharge.

3d. The first assessments to be made of the said duties for any year shall be made according to the estimates or returns and assessments mentioned in the preceding rule, without including therein any matters of surcharge by the inspectors or surveyors; which first assessments respectively shall be separately and distinctly collected, and shall be contained in the first duplicates to be delivered to the collectors and surveyors for that year, and shall be collected and levied in moieties on the days hereinafter mentioned; that is to say, one moiety of the duties of assessed taxes, if not sooner paid or satisfied according to the directions of the said acts respectively, shall be collected or levied *before the* 10*th day of* October, *in each year* of assessment, *or within* 21 *days* thereafter, and the other moiety thereof *before the 5th day of* April following, *or within* 21 *days thereafter:* provided always, that nothing herein contained shall be construed to alter the times or proportions at which the said duties are payable, or in any way to impeach or affect the powers or provisions of the said acts for the recovery of the said duties at such times and in such proportions as are therein prescribed; and the said duties shall be deemed payable quarterly at the times mentioned in the said acts, by four instalments; and it shall be lawful to demand, receive, or levy the same according to the said acts; any thing herein contained to the contrary notwithstanding.

Times of collection.

Time of delivery of duplicates of first assessment.

4th. In order that due time may be given for hearing appeals against such first assessments, the respective commissioners are hereby required and strictly enjoined to deliver, in all cases re-

lating to the duties of assessed taxes, their first duplicates thereof to the respective collectors *on or before the 20th day of* July *in each year*, with directions to cause public notice thereof to be given in the parish, ward, or place to which such duplicates relate; to which duplicates in the hands of such collectors all persons interested shall have access, and may examine the same at any reasonable time in the daytime. 48 G.3. c.141.

Regulating appeals as to the time of entering them.

5th. All appeals against such first assessments shall be entered, and due notice thereof given within the respective times hereinafter limited; that is to say, in all cases relating to the duties on assessed taxes, *within 28 days after the delivery of the duplicates* of the first assessments to the respective collectors of the parishes, wards, or places, for which such assessments shall be made.

As to hearing them.

6th. All appeals against such first assessments of the duties of assessed taxes, in any year, shall be heard and determined *between the 20th day of* August *and the 10th day of* September following; and on such day or days within the time herein limited, as the commissioners of the division shall appoint, whereof they are hereby required to give notice in the manner in which such notices have usually been given in the several parishes, wards, and places in their division: provided, that in every case where the party assessed shall be prevented from appealing within the time herein limited, or from attending in person at the time limited for hearing the appeal of such party by absence or sickness, or other sufficient cause, to be proved before the respective commissioners on the oath or solemn affirmation of the party, it shall be lawful for the respective commissioners to enter such appeal after the time herein limited, or to postpone the hearing thereof for such reasonable time as shall be necessary, so that no delay shall be thereby occasioned in the payment or collection of the sums contained in the said first assessment.

Time of delivering duplicates.

7th. The said respective commissioners shall cause to be delivered to the respective collectors their duplicates of the first assessment, including in such duplicates, as well all such matters as have been appealed against and determined by the said commissioners, as all such matters as have been assessed and not appealed against; and such duplicates shall be delivered *on or before the 20th day of* September *yearly;* to which duplicates warrants shall be annexed for collecting the duties therein contained within the times respectively before prescribed.

Cases not then determined to be added to first assessment.

8th. All such assessments which shall not have been made on or before the 20th of *September*, in respect of the duties of assessed taxes, or against which any appeal shall be depending on that day, shall, on the making or determining the same from time to time, be added to such first assessments and to the duplicates thereof; and the duties therein, or the moieties thereof, which ought to have been previously collected or paid, shall be collected, levied, or paid, on or before such day or days as the respective commissioners shall order by their warrant annexed to the duplicates of such added assessments, such day not being later than 21 days after the making such assessment, or determining the appeal thereon.

48 G.3. c.141.

No. IV. — Rules and Directions for making and collecting the Supplementary Assessments in each Year.

Surcharges to be made on or before 15th of December.

1st. If any inspector or surveyor shall have surcharged any person or persons for any matter or thing for which a surchage is allowed, it shall be lawful for such inspector and surveyor to deliver his or their certificates of surcharge, explicitly stating the particulars in respect to which such surcharge has been made to the respective commissioners in respect of the duties of assessed taxes, at any time *on or before the* 15*th day of* December, in each year of assessment for the whole of such year, and shall have delivered, in the manner directed by the said acts, the duplicates thereof, and the same shall have been entered of record in H. M.'s exchequer; which certificates of surcharge shall be signed and allowed by two of the respective commissioners, under the restrictions, and subject to appeal under the conditions prescribed by the said acts respectively.

Appeals from surcharges to be heard between 20th of January and 20th of February.

2d. All appeals against surchages relating to the duties of assessed taxes shall be heard and determined by the commissioners of the division, or any two or more of them, *between the* 20*th day of* January *and the* 20*th day of* February following: provided always, that in every case where the party surcharged shall have been prevented by absence or sickness, or other sufficient cause, to be proved before the respective commissioners on the oath or solemn affirmation of the said party, from appealing within the time herein limited, or from attending in person at the time limited for hearing such appeals, it shall be lawful for the respective commissioners to enter such appeal after the time herein limited, or to postpone the hearing thereof for such reasonable time as may be necessary.

Supplementary assessments to be made on the surcharges after appeals.

3d. The said certificates of surcharge, amended according to the determination of the respective commissioners, shall be a sufficient authority to them, and they are hereby required to cause supplementary assessments to be made out of the said duties respectively, including therein all matters so surcharged, as well such matters as have not been appealed against, as the matters determined by the said commissioners, which matters shall be severally charged to the said duties respectively, according to the said certificates of surcharge, amended, in cases requiring amendment, according to the determination of the said commissioners, and also including therein the double duties or moieties, or parts thereof assessed, over and above the rates of duty prescribed by the said acts respectively, and also all fines and penalties imposed on any person or persons by the said respective commissioners within the year of assessment for offences committed against the said acts or this act; which double duties or moieties, or parts thereof, and penalties, shall severally and respectively be added to such supplementary assessments, and be collected therewith.

Supplementary assessments to be paid on the last instalment of the duties on the first assessments.

4th. The duties and sums of money contained in the supplementary assessments of each year, which shall be completed within the time herein limited, shall, if not sooner paid or satisfied according to the directions of the said acts respectively, be collected and levied at the respective times hereinbefore appointed for payment of the last instalment of the duties contained in the first assessments of the said duties respectively for that year; and

each assessment thereof shall be collected, levied, or paid, in one sum. 48 G. 3. c. 141.

5th. In all cases where the said duties, or any of them, shall not have been ascertained and assessed before the respective days appointed by this act for payment for the last instalment thereof, the same respectively shall and may be assessed from time to time, until a complete assessment be made, and shall be collected, levied, or paid, in one sum within 21 days after notice of the amount contained in the assessment thereof.

Assessments not completed within the time limited, to be collected in one sum.

6th. If any inspector or surveyor shall wilfuly make any false and vexatious surcharge of any of the duties contained in any of the said acts, or shall wilfully deliver, or cause to be delivered, to the respective commissioners for executing the said acts or any of them, any false and vexatious certificate of surcharge of any of the said duties, every such inspector or surveyor shall be liable to forfeit to the party aggrieved any sum not exceeding 100*l.* or treble the value of the sum claimed by such surcharge, over and above the rate of duty charged by the said acts respectively, to be recovered by action of debt, bill, plaint, or information, in any of H. M.'s courts of record at *Westminster* for offences committed in *England*, and in the court of great sessions for offences committed in *Wales*, with full costs of suit; and it shall be lawful for the party aggrieved to sue either for the said penalty of 100*l.* or for the said treble value under this act, at his or her election; and it shall also be lawful for the judge before whom such inspector or surveyor shall have been convicted of such offence in any such suit, either for the said penalty or treble value, or any part thereof, by indorsement on the postea, or for the court before whom such inspector or surveyor shall be convicted, by entry on the record, to certify his or their satisfaction with such conviction; and in every such case the said certificate shall be an authority to the commissioners for the affairs of taxes, and they are hereby required to cause to be paid by the receiver-general of the county, riding, or division wherein such conviction was had, out of any monies of the said duties respectively in his hands, such reasonable expences as the plaintiff shall have incurred, over and above the costs of suit as aforesaid, the amount thereof being certified by the proper officer for taxing costs of the court in which such suit shall be commenced, to have been necessarily expended, and allowed by such officer as between attorney and client; and every such inspector or surveyor shall, after such conviction, be discharged from his employment.

Providing against vexatious surcharges.

By stat. 50 *G.* 3. *c.* 105. intituled "An act to regulate the manner of making surcharges of the duties of assessed taxes, &c. and for amending the acts relating to the said duties," the several surveyors and inspectors appointed to carry into execution the powers in any act or acts relating to the duties of assessed taxes, given to them, in that part of *G. B.* called *England*, shall, in making any increase of duty either on the returns of parties, or the estimates of assessors, under the said acts, observe the following rules and directions:— 50 G 3. c. 105.

50 G.3. c.105.

Rules and Directions for making Objections and Charges, and for limiting the Times of making the same in certain Cases, in that Part of *Great Britain* called *England*.

Surveyors and inspectors to examine returns and assessments, and may amend them, &c.

1st. Every surveyor and inspector are hereby strictly enjoined and required to inspect and examine all and every the returns of lists, statements, declarations, accounts, or estimates, made by any person or persons chargeable to the said duties or any of them, or by any assessors of any of the said duties, according to the directions of any act or acts before mentioned; and also all and every the first assessments of the said duties or any of them, made for any parish, ward, or place for any year, as well before as after the respective commissioners, acting in the execution of the said acts respectively, shall have signed and allowed the first assessments made for such parish, ward, or place, for that year: and if he or they shall discover any error or wrong amount or computation of duty therein; or that any person who ought to be charged with the said duties, or any of them, shall have duly made a return as required by the said acts, but shall have been omitted to be charged with the said duties or any of them, or shall be under-rated in the said first assessment, and that the said return doth contain matters sufficient, whereby the said surveyor or inspector may rate such person in the said first assessment to the full duties chargeable upon him, according to, or by or from, such return, it shall be lawful for the said surveyor or inspector, and they respectively are hereby required, before such allowance, to correct and amend such assessments, and to charge such person to the full amount, and at the full rate of duty at which he ought to be charged, according to his return delivered.

After assessments are allowed, the surveyor to certify omissions to the commissioners by way of surcharge.

2d. If any such surveyor or inspector shall, after any such assessment in respect of the duties of assessed taxes shall be signed and allowed by the said commissioners, find or discover upon his survey or examination, or otherwise, that any person liable to the said duties, or any of them, in respect of which, such lists, statements, or accounts, ought to have been delivered, hath not made any return as by the said act or acts is required; or hath omitted any person, or any article, matter, or thing, or any description of the same, which ought to have been returned, so that he shall not on account of such default or omission have been charged to the amount which ought to be paid by him; or that any exemption, allowance, or deduction, which is not allowed by the respective acts, shall have been claimed in or by such return; in every such case it shall be lawful for the said surveyor or inspector to certify the same in writing, together with an account of every such default, omission, or claim, with the name or description of the person or thing not returned or omitted, to the best of his knowledge and belief; and the full amount of the single duty by which the assessment ought to be increased, explicitly stating the particulars in respect of which such charge has been made, and to deliver the same to any two or more of the said commissioners, for putting in execution the said acts respectively, or to their clerk, in order to have such default, omission, or claim, and the under-rate occasioned thereby, rectified; and such commissioners are, upon the delivery of any such certificate, and upon oath being first made, either by the inspec-

Upon delivery of such certificate, and upon oath being made that notice was given to the party, the commissioners to allow the certificates.

tor or surveyor, or any other credible witness or witnesses who shall have served the same, that a notice to the effect hereinafter mentioned was duly served, required to sign and allow the said certificates, and to cause supplementary assessments to be made according to such certificates, subject to appeal as hereinafter is allowed. 50 G.3. c.105.

3d. Every person in whose custody any such lists, statements, or accounts shall be, shall, upon the request of any such surveyor or inspector, deliver the same into his custody for the purposes aforesaid, taking his receipt for the same; and every person in whose custody any such assessment shall be, shall, upon the request of such surveyor or inspector as aforesaid, produce the same; and such surveyor or inspector is hereby authorised to take charge of the same, until he shall have taken such copies of, or extracts from, the same, as may be necessary for his and their better information.

Lists to be delivered to the surveyors, and assessments to be produced for taking copies.

4th. The said inspectors and surveyors shall give to every person so charged, or leave at his or her last or usual place of abode, in the district where such charge was made, or on the premises charged with the assessment, as the case shall require, and as shall have been directed by the several acts relating to the said duties respectively, notice in writing of such charge, and of the amount of duty to be included in the certificate of such charge, and the particulars thereof; which charges the said inspectors and surveyors are hereby empowered to make, at or before such times as are directed by the said acts or this act, for the delivery of the certificates of such charges to the said respective commissioners.

Notice to be given to persons charged.

5th. In default of a meeting of the said respective commissioners before the time limited by the said acts or this act, for the hearing of any appeals from the charges of the said surveyor or inspector, or if the said surveyor or inspector shall not have had notice of a meeting of the said respective commissioners, it shall be lawful for the said commissioners and they are hereby required, at their first meeting to be held thereafter, to sign and allow the said certificates, and afterwards to hear and determine all appeals therefrom.

Delivery of certificate of surcharge to the clerk, in default of meeting of the commissioners, to be sufficient.

6th. The certificate delivered to the commissioners containing the day or days of service of the notice delivered to the party charged, shall be deemed sufficient proof of the contents thereof, unless the contrary be shown on the production of such notice to the said respective commissioners by the party charged; and no proof of the contents of any such notice shall be required by the said commissioners to be given to them, either by a copy thereof or otherwise, previous to their signing or allowing the said certificates, nor upon appeal therefrom, nor other proof in any matter relating to the same, except as aforesaid; and except the oath of the person or persons who shall have served such notices as hereinbefore directed, and which shall be in the form and to the effect following:

Certificate to be deemed sufficient proof of contents of notices.

I A. B. *do swear, that a notice in writing was duly served upon each person mentioned in the above certificate, containing the particulars as set forth therein respectively, on the day or days mentioned in the said certificate.*

50 G.3. c.105.

Assessments or charges not to be impeached on account of mistakes in the names or descriptions.

7th. No assessment made or to be made by any assessor or assessors, nor any charge made or to be made by any surveyor or inspector upon such assessment, shall be impeached or affected by reason of any mistake in the christian or surname, or either of them, of any person liable to any of the said duties, or of any servant or person, or of any article, matter, or thing for which the person so charged shall be liable to any of the said duties, nor by reason of any mistake in the amount of the duty charged, nor by any variance between the notice and the certificate of charge, whether such mistake shall appear in, or such variance shall arise from, the notice and certificate to be delivered or made in such case, or in either of them; but all such assessments and charges shall be valid and effectual to all intents and purposes, notwithstanding any such mistake or variance; provided, that in cases of charge, the notice thereof be duly served on the person intended to be so charged, and such notice and certificate do severally contain in substance and effect the several particulars on which such charge shall have been made; and every such charge shall be heard and determined on the merits, in such manner as in the said acts or in this act is directed.

Double duty may be avoided by making a return before the day of appeal, with a declaration annexed.

8th. It shall be lawful for any person to whom such notice of charge shall be given as aforesaid, on occasion of his or her having neglected to make any return as required by the said acts, at any time previous to the time appointed for hearing appeals next after the delivery of such notice, to make out and deliver to the surveyor or inspector who shall have delivered the notice of charge, a true, perfect, and complete list, statement, account, or estimate, of all matters and things required by the said act or acts to be returned; so that he or she may from such last-mentioned list, statement, account, or estimate, so to be delivered, be charged to the said duties respectively the full sum at which he or she ought to be charged by virtue of the said act or acts; provided, that to every such list, statement, account, or estimate, there shall be annexed a declaration in writing in the form and to the effect hereinafter mentioned; and if the said surveyor or inspector shall be satisfied with such list, statement, account, or estimate, and the declaration annexed thereto, then he shall certify such return and declaration annexed thereto to two or more of the said commissioners, with the amount of the duty to be charged; who shall thereupon cause the assessment to be made according to such certificate, and the same rate of single duty as set forth in the said several acts respectively, to be charged on the person making such return, without further trouble or delay; but if upon examination of such list or return, and declaration annexed thereto, the said surveyor or inspector shall see just cause to object thereto, he shall thereupon certify such return and declaration annexed thereto, together with the cause of his objection, to two or more of the said commissioners, who shall thereupon cause the assessment to be made according to such last-mentioned certificate in double the amount of the duty at which he or she shall be charged, and from which charge no abatement shall be made on any pretence, unless on appeal as hereinafter is directed; of which objection, notice shall be given by the surveyor or inspector to the person to be charged thereby, together with the cause of his objection to the

The surveyor may certify the same, and the party shall be charged at single duty.

But if dissatisfied, shall state his objection.

said return and declaration to be annexed thereto; and the said commissioners shall determine the said objections on the merits, without further notice of appeal from the party so charged. 50 G.3. c.105.

Declaration to contain a satisfactory account in excuse of the party, and to be attested by credible witnesses.

9th. Every such declaration, in cases where no return hath been previously made by the person so charged for the same year, shall allege and declare in substance, or to the effect as follows; (that is to say,) that he or she the said exhibitant was not at his or her dwelling-house or other place of abode at the time appointed for the fixing, or delivery, of general or other notices for making a return as required by the said act or acts, nor between that day and the time limited for making such return to the assessor, and that he or she hath not received or had any knowledge of any such notice; or, that he or she was disabled by sickness from making such return; or, that the non-delivery of such return was occasioned by the following mistake or accident, without any intention to defraud the revenue, *videlicet* [*here set forth the cause of such default*]; and that the return to which the declaration of the said exhibitant is annexed is a full, perfect, and complete return of all matters and things required of the said exhibitant by the said act or acts, or by this act, to the best of his or her judgment and belief: which declaration and return shall severally and respectively be signed by the party making the same, in the proper name and handwriting or sign of the said party, and attested by any one or more credible witness or witnesses, who shall have seen the said party subscribe or sign the same, and shall attest the signature thereof in the proper names and handwriting of the said witness or witnesses respectively; provided every such witness shall be an inhabitant of the same ward, parish, or place where the said party shall reside, and who shall be rated in the assessment of the same duties for the same ward, parish, or place as aforesaid, or if in any place there shall be no inhabitant competent to be such witness, then the said declaration shall be attested by some credible witness, rated as aforesaid, and residing in the next adjoining parish where the said party shall reside.

On charges for any omission in a return, the double duty may be avoided by making a new return with a declaration annexed.

10th. It shall be lawful for any person to whom such notice of charge shall be served on occasion of his or her having omitted in the return before made for the same year any person, description, statement, account, or any article, matter, or thing which ought to have been contained in such former return, or which shall be mentioned in such notice of charge not to be contained in such former return, or of having claimed any exemption, allowance, or deduction not allowed by the said acts, if he shall consent or agree to such charge, to give notice in writing of his consent accordingly, to the said surveyor or inspector; and the said surveyor or inspector shall certify such consent, and the amount of the single duty which ought to be charged to the said commissioners; according to which certificate the party charged and consenting thereunto shall be assessed in the single duty, and such consent shall be deemed equivalent to an amended return and declaration as required by this act; or such person so charged, if he or she shall not so consent or agree in manner aforesaid, may amend such former return, by delivering to the surveyor or inspector as aforesaid a supplementary list, statement, account, or estimate, according to the directions of the said acts respectively, and as

50 G. 3. c. 105.

the case may require, to which a declaration in writing shall be annexed to the effect hereinafter mentioned; and the said surveyor or inspector shall be at liberty to certify his satisfaction therewith, or his objection thereto, to the said respective commissioners; according to which certificate the party charged shall be assessed in the single duty if such surveyor or inspector shall be satisfied therewith, or in the double duty in the manner hereinbefore directed, in cases where no previous return shall have been made, and as the case may require, subject to the like power of appeal from such objection, and to the like proceedings in all other respects as are before given.

Charge to be made in the single duty, unless surveyor certify his objection.

Form of declaration in cases of charge for defective returns.

11th. Every such last-mentioned declaration shall allege and declare the grounds and cause of each omission made or mentioned in such notice of charge, to have been made in such former return, and also the grounds and cause of each claim of exemption, allowance, or deduction, and also that the return to which the said declaration is annexed is a full, perfect, and complete return of all matters and things required of him by the said acts, or by this act, to which the said charge shall relate, to the best of his judgment and belief, and that such omission or claim was not made with intention to defraud the revenue; which said last-mentioned declaration and return shall severally and respectively be signed and attested in the manner before directed in cases of other declarations and returns before mentioned.

No declaration to be required if the party give notice in writing to surveyor that his return is correct, &c.

12th. No return or declaration shall be required of any article, matter, or thing, of which the party charged shall have made a due return for the same year, but the said party shall be at liberty to give notice in writing to the said surveyor or inspector, that he or she doth abide by such former return; or may make out and deliver a supplementary return and declaration in the manner before directed; which return and declaration, together with the return before made, subject nevertheless to the objection of the said surveyor or inspector in manner aforesaid, shall be deemed full, perfect, and complete returns, if the same shall together include all articles, matters, and things for which the party so charged shall be chargeable; and no person shall be liable to the penalties contained in this act for any article, matter, or thing which shall have been returned by him or her in manner aforesaid, so that he or she might have been fully charged to the said respective duties chargeable thereon, but only for such articles, matters, or things which shall not have been returned by him or her in manner aforesaid.

Providing against vexatious charge.

13th. If any surveyor or inspector shall wilfully make any false and vexatious charge of any of the said duties, or shall wilfully deliver or cause to be delivered to the respective commissioners for executing the said acts, or any of them, any false and vexatious certificate of charge of any of the said duties; or any false and vexatious certificate of objection to any supplementary return, or shall be guilty of any fraudulent, illegal, or unjust conduct in the prosecution of any charge of any of the said duties, or shall wilfully neglect the duty of his office; or in any manner offend against the laws for regulating the duty of his said office, and the same shall be proved on the certificate of the said respective commissioners of the division where such offence shall be committed, or any two or more of them, or on the affidavit on

oath or solemn affirmation, to be taken before any one of the said respective commissioners, of any credible person or persons, to the satisfaction of the commissioners for the affairs of taxes, or any two or more of them; or by the confession of the said surveyor or inspector, it shall be lawful for the said commissioners for the affairs of taxes, for any such offence, to suspend the payment to the said surveyor or inspector of all or any reward, emolument, or advantage which the said surveyor or inspector would be entitled to under the said acts, or any of them, for any increase of duty or overplus above the rate of duty occasioned by the information or charge of the said surveyor or inspector, or such part thereof as the said commissioners for the affairs of taxes shall deem just and necessary; and finally to withhold the same, and direct the same to be paid by the receiver-general into H. M.'s receipt of exchequer; unless the lords commissioners of H. M.'s treasury shall think fit to restore the same to the said surveyor or inspector, or to mitigate and lessen the sum so to be withheld and paid over into H. M.'s exchequer: provided always, that nothing hereinbefore contained shall be construed to impeach or affect any action or suit for the recovery of any penalty or penalties imposed by any former act or acts, against such surveyor or inspector for any such offence or offences as aforesaid, or for any false and vexatious charge of any of the said duties; but all such penalties, and the powers for recovery thereof, shall be and remain in force notwithstanding the powers of this act, or any act or thing done in pursuance thereof. 50 G.3. c.105.

14th. Where any person thinking himself overcharged or overrated by any charge or certificate of objection by any surveyor or inspector as aforesaid, or by any assessment to be made by virtue or in pursuance of such charge or certificate, shall have appealed therefrom to the said commissioners according to the directions of the said acts, the appellant shall, upon the hearing such appeal, in all cases where a list, statement, or account in writing, shall or ought to have been delivered by the said appellant to the assessor, produce or cause to be produced before the said commissioners a true, perfect, and complete list, statement, account, or estimate, as the case may require, to the best of the judgment and belief of the said appellant, with a declaration in writing thereunto annexed, to the effect hereinafter mentioned; (that is to say,) the said appellant shall declare that the list, statement, or account to which the said declaration is annexed, doth contain all matters and things required of the said appellant to be returned by him, for which he is chargeable by virtue of any act, to the best of his judgment and belief; which return and declaration shall severally and respectively be signed by the said appellant in the proper name and hand-writing of the said appellant; and in default of the production of such list, statement, account, or estimate, by or on the behalf of the said appellant, with such declaration annexed, the said commissioners shall confirm the charge or objection against which such appeal was made.

Persons overcharged may appeal to the commissioners.

Upon hearing of appeals, the appellant shall produce lists, &c.

Charges to be confirmed in default of production of such list, &c.

15th. Upon every charge allowed or confirmed by the respective commissioners in the whole or in part, upon which any increase of duty shall be made, the assessments thereupon shall be made in double the amount of duty which shall have been charged

Assessments to be made in double duty, &c.

50 G.3. c.105.

in the supplementary assessments on occasion of such charge, unless where the same is otherwise provided for by this act.

Double duty may be remitted, where the surveyor might have amended the assessment by the return.

16th. Where an amended return, with a declaration annexed thereto shall not be delivered to the surveyor or inspector, and where no list, statement, account, or estimate, with such declaration annexed as aforesaid shall be produced to the said commissioners, on the hearing of such appeal, it shall not be lawful for the said respective commissioners to make any abatement, defalcation, or remission of the said double duty or any part thereof, but the same shall stand good and remain part of the annual assessment; unless the party charged shall have given notice of his or her consent to the charge of the said surveyor or inspector, or unless the said respective commissioners shall be of opinion, that the said surveyor or inspector was or were enabled to correct or amend the first assessments of the said duties for that year, according to the directions of this act, by means of or by reference to the original return of the party so charged, in which cases it shall be lawful for the said commissioners who shall have confirmed such charge, at the same time to remit and strike off the whole of the said double duty.

Double duty may be remitted where the default has been corrected by the party's return.

17th. Upon every charge confirmed upon appeal, if the said commissioners shall after examination of the appellant, or by other lawful evidence produced on his or her behalf, as directed by the said acts respectively, be of opinion that the alleged default, neglect, omission, or claim of exemption, allowance, or deduction, hath been duly accounted for, and that the cause or causes have been truly stated in any amended return and annexed declaration, and that the appellant had a just or reasonable cause of controverting the said charge, and that the said default, neglect, omission, or claim of exemption, allowance, or deduction, was not wilfully made, and with intention to defraud the revenue, it shall be lawful for the said commissioners who shall have determined the said appeal, although they shall have confirmed the charge in part or in the whole, at the same time to remit and strike off the whole of the double duty.

Moiety of double duty may be remitted where the default has not been fraudulent.

18th. Upon every charge confirmed upon appeal, although no amended return shall have been delivered to the surveyor or inspector as allowed by this act, if the said commissioners shall, after examination of the appellant, or by other lawful evidence produced on his or her behalf, as directed by the said acts respectively, be of opinion that the alleged default, neglect, omission, or claim of exemption, allowance, or deduction, was not wilfully made, and with intention to defraud the revenue, it shall be lawful for the said commissioners who shall have determined the said appeal, at the same time to remit and strike off any part of the said double duty, not exceeding one moiety thereof; provided that in every such case, if the appellant shall prove to the satisfaction of the said commissioners, that he or she hath been prevented from making such amended return within the time herein limited by absence, or sickness, or other sufficient cause, and that such default, neglect, omission, or claim as aforesaid was not wilfully made, and with intention to defraud the revenue, it shall be lawful for the said commissioners to remit and strike off the whole of the said double duty.

If prevented from making amended return by sickness, &c. the whole of double duty may be remitted, &c.

19th. Nothing herein contained shall be construed to grant the double duty, or any part thereof, on any of the said duties, if the party charged shall not by the laws in force at and immediately before the passing of this act be directed to return the article, matter, or thing on which the said duties shall be chargeable, and for which the said party was so charged.

50 G.3. c.105. No double duty where the party is not required to make a return.

20th. Every increase of duty made by occasion of such charges, whether the whole of the double duty shall be remitted or not, and also the double duty, or such part thereof which shall not be remitted, shall be certified on the supplementary assessments to be made for each year under the hands of the said respective commissioners, or any two of them, to the commissioners for the affairs of taxes; and the said commissioners for the affairs of taxes shall have authority to direct the receiver-general who shall have received the said increase and double duty, to pay to the said surveyor and inspector out of the same, in such proportions as they shall think proper, or to either of them as they see fit, any sum of money not exceeding the rate which shall have been settled by the lords commissioners of the treasury, or the high treasurer for the time being, as a reward for their labour and diligence in making such increase of duty; and the certificate of the said commissioners for the affairs of taxes, or any three or more of them, shall be a warrant to the said receiver-general to pay the same.

Reward may be given to officers.

§ 2. The several provisions in the preceding clause of this act, relating to charges in the single duty as aforesaid, shall be construed, so far as the same respect the duties of assessed taxes in that part of *G. B.* as aforesaid, as applicable to the provisions of stat. 43 *G.* 3. *c.* 161.; and any other act or acts for regulating the said duties respectively, and relating to surcharges in the double duty; and all provisions, clauses, matters, and things in the said act, which are repugnant to the provisions of this act, and for which other provisions are made, except such provisions, &c. therein as relate to surcharges in the double duty which are herein declared to be applicable to the provisions of this act, shall severally cease and determine.

Provisions relating to charges in single duty, &c. shall be construed as applicable to the 43 G.3. c.161. & 46 G.3. c.65, &c.

Provisions in recited acts repugnant hereto repealed.

§ 3. In case any commissioner, acting in the execution of any act herein mentioned, or of this act, shall by information, or other process or proceedings whatsoever at the suit or on the behalf of H. M., be proceeded against for any thing he may do or determine, or may refuse or omit to do in the execution of any such act; and upon the trial of such information or other process, a verdict shall be given, or any order or rule of court shall be made for such commissioner, or such information or other process or proceeding shall be discontinued or withdrawn, or dismissed the court in which they shall have been prosecuted; then and in either of the said cases such commissioner shall be entitled to his full costs of suit, to be taxed by the proper officer of such court as between attorney and client; and it shall be lawful for the commissioners for the affairs of taxes to direct the receiver-general of the county within which any such commissioner shall act, and the said receiver-general is hereby required to pay such taxed costs out of any money in his hands arising from the duties of assessed taxes, and which shall be allowed in the accounts of the said receiver-general.

Commissioners acting not liable to suits.

50 G. 3. c. 105.

By § 4. The provisions of 43 G. 3. c. 161. § 29. respecting giving notice of beginning or ceasing to keep the different subjects of taxation, is repealed.

Time for making out and delivering duplicates of assessments under recited acts enlarged.

By § 5. After reciting that whereas by the said act of the 43 G. 3. c. 99. § 46. it is enacted, that the respective commissioners should cause two duplicates of every assessment to be made out on parchment by their clerk, within one month at farthest after the 10th of *February*, after the making the said assessment yearly, to be dedelivered as therein is mentioned under a penalty on the clerk to the said commissioners who shall neglect or refuse to make out and deliver such duplicates within the time before directed; and whereas it is necesary to give further time for making out and delivering such duplicates, it is further enacted, that in respect of the duties of assessed taxes the said respective commissioners shall cause the duplicates required by the said act to be made out after the time appointed by the said act for making the supplementary assessments of the said duties yearly, and within one month at farthest after all appeals from the said supplementary assessments shall have been heard and determined, and so that the same may be delivered to the receiver-general, and to the commissioners for the affairs of taxes respectively, on or before the day to be appointed for the receipt of the last instalment of the said duties next after the 5th of *April* yearly; and no clerk to the said respective commissioners who shall make out and deliver such duplicates required by the said act within the time aforesaid shall be liable to the penalty by reason of not making out or delivering the said respective duplicates within the time directed by the said act.

No person having made out lists of the greatest number of servants, &c. shall be compellable to make out a fresh list.

§ 6. Provides, that no person who shall in the year 1810, or in any year, have made out, signed, and delivered in the manner directed by the said last-mentioned act made in the 43 G. 3. or shall in any future year make out, sign, and deliver in like manner lists of the greatest number of servants or other male persons retained or employed, and of carriages, horses, mules, and dogs kept by such person, or of having worn or used hair powder or any armorial bearings or ensigns, in the course of the year ending on the 5th of *April* preceding the delivery of such list; and who shall continue to retain or employ the like number and description of servants or other male persons, and keep the like number and description of carriages, horses, mules, and dogs respectively, or wear or use hair powder or armorial bearings or ensigns, in the like manner subject to the like duty as in the year to which such list related, and in the same ward, parish, or place, shall be obliged to make out, sign, and deliver such lists, or either of them, in any succeeding year, nor be subject or liable to any penalty for omitting or neglecting so to do, so long as such person shall continue to reside in such ward, parish, or place, and shall not be chargeable in any other ward, parish, or place, for any servant, carriage, horse, mule, or dog kept by such person: provided always, that such person shall in each year deliver or cause to be delivered to the assessor or assessors of the ward, parish, or place, notice in writing that he or she is desirous of being charged for the same articles, matters, and things as in the preceding year; and every such notice shall be an authority for the said commissioners to charge such person in the first assessments for that year for the

same articles, matters, and things respectively, for which such person stood charged in the assessments of the preceding year. 50 G.3. c.105.

In cases of charge where the omission was not wilfully made, double duty to be struck off.

§ 7. In all cases of charge by any surveyor or inspector as aforesaid, of any of the duties on servants, carriages, horses, mules, and dogs, and for using hair powder, or armorial ensigns, where it shall be proved on appeal to the satisfaction of the said commissioners acting for the division, that there was any doubt whether the article or articles so charged was or were rateable within the meaning of the said acts, or any of them, and that the omission thereof or alleged default was not wilfully made, and with intention to defraud the revenue, it shall and may be lawful for such commissioners to remit or strike off the whole of the double duty chargeable on the person so charged.

Allowing time for delivering in amended return.

§ 8. Every person to be charged in pursuance of this act by the certificates of any surveyor or inspector, shall have the full period of ten days after service of the notice of such charge, to deliver his or her amended return to such surveyor or inspector, according to the directions of this act; and no certificate of such charge shall be signed or allowed by the said commissioners, nor any appeal shall be heard from such charge, before the expiration of such period of ten days; and if the person so charged shall before the expiration of the said period deliver a return and declaration as aforesaid, which the said surveyor or inspector shall object to, then such return and declaration shall be deemed to be a sufficient notice of appeal from such charge to the commissioners of the division, who are hereby required to hear and determine the matter thereof, according to the directions of this act; and if the person so charged shall not before the expiration of the said period of ten days deliver a return or declaration as aforesaid, it shall be lawful for the said commissioners, upon the appearance before the said commissioners of the person charged, or some person on his or her behalf, and the delivery to them of such list and declaration as is hereinbefore required on the day or days appointed for hearing appeals from the charges of such surveyor or inspector, to hear and determine the matter of such charge, according to the directions of this act, notwithstanding the person so charged shall not have given any previous notice of his or her intention to appeal; provided that in default of the appearance of the party charged before the said commissioners, or some person on his or her behalf on such day or days of appeal, or in default of the production of such list, or declaration as aforesaid, the certificate of such charge shall be confirmed by the said commissioners.

Persons making false declaration guilty of a misdemeanor.

§ 9. If any person in any such declaration as aforesaid shall wilfully and fraudulently declare any matter or thing which shall be false or untrue, every person so offending, and being thereof lawfully convicted, shall be judged guilty of a misdemeanor, and shall be committed to the gaol of the county, riding, or shire where such offence shall be tried, for any space of time not exceeding six calendar months, and shall be fined in such sum, not exceeding treble the amount of duty for which such person shall have been charged, as the court before whom such trial shall be had shall think fit to order.

Indictment for false declar-

§ 10. Any indictment for such misdemeanor in making a false declaration as aforesaid, whether such declaration shall be made

50 G.3. c.105. within *G. B.* or without, shall be laid, tried, and determined in the county, riding, or shire where such declaration shall be exhibited, to the respective commissioners of the duties to which such declaration shall relate.

ation to be laid in the county, &c. where exhibited.

§ 11. After reciting stat. 48 *G.* 3. *c.* 141. No. 5. enacts, that whenever any schedule of arrears shall have been or shall be transmitted by the respective commissioners acting in the execution of the acts in relation to the duties therein mentioned, or any of them, to the receiver-general of the said respective duties, and the commissioners for the affairs of taxes shall be of opinion that the said duties in arrear might more conveniently be collected by the respective collectors of the said duties in their respective districts, according to the directions of the several acts granting the said duties, or other acts relating to the said respective duties, than by process to be issued out of the court of exchequer, it shall be lawful for the said commissioners for the affairs of taxes to direct the said receiver-general to return the said schedules to the said respective commissioners from whom he or they received the same; and the said respective commissioners shall cause the said duties in arrear to be levied under all or any of the powers, and by any of the ways and methods, prescribed in the said acts respectively, without delay.

Arrears of duties may be collected by collectors.

48 G.3. c.141. Stat. 48 *G.* 3. *c.* 141. No. V. — Rules and Directions for paying to the Receiver-General, and accounting for the Duties received by the Collectors.

Collectors to pay the duties on the next receipt, and to account twice in each year.

1st. The several collectors shall pay to the receiver-general or his deputy all monies of the said repective duties which the said collectors shall have received or levied, by virtue of any of the acts herein mentioned, on the respective days herein appointed for payment of the said duties or any of them, next after their receipt of the same, and shall twice in each year account with such receiver-general or his deputy for the duties of assessed taxes, and shall pay or account for one entire moiety thereof on the day to be appointed next after the 10th day of *October*, and the remainder thereof on the day to be appointed next after the 5th day of *April* in each year; on which last-mentioned day appointed for payment, the full and entire amount of duties, penalties, and sums of money contained in the said supplementary assessments of the said respective duties, shall also be paid to the receiver-general or his deputy, or accounted for to him or them in the manner hereinafter directed; for which payments, the said receiver-general or his deputy shall give to such collectors receipts in writing, and for which receipts no stamp duty shall be charged or chargeable: provided, that if any collector shall not at or before the respective times hereinbefore limited have received or levied the said respective duties, or shall not then account to the receiver-general or his deputy for the same, in the proportions before directed, he or they shall deliver to the said receiver-general or his deputy, at the respective times appointed for such payments, or to the commissioners of the division, within three days after the respective times aforesaid, a schedule in writing, signed by such collector, containing the christian and surname of

Receipts to be given for each payment

In default of paying the full amount, a schedule of arrears to be given.

each defaulter, and the respective sums then in arrear from each such defaulter, with an affidavit subscribed, to be made on the oath or affirmation of the said collector (which oath or affirmation may be taken before any one commissioner of the division), that the several sums contained in the said schedule have been demanded from, and are due and wholly unpaid from the respective persons charged therewith, either to such collector, or to any other person for such collector, to the best of his knowledge and belief. 48 G.3. c.141.

2d. Every such schedule, being certified under the hand of the receiver-general or his deputy of the county or division where the said arrears accrued to the court of exchequer at *Westminster*, shall be received and taken as sufficient evidence of a debt due to H. M., and shall be a sufficient authority to the barons of the said court, or any one of them, to cause process to be issued against such defaulter named in the said schedules, to levy the whole sum in arrear and unpaid by such defaulter; and the sheriff or other officer to whom the said process shall be directed, shall, without delay, cause the whole sum in arrear to be levied by due course of law as a debt to H. M. on record, with all costs and expences attending the same, and shall pay the monies so levied, after deducting the said costs and expences, to the said receiver-general or his deputy, and shall make return of the said process to the said court, according to the due course thereof: provided that every such schedule shall remain with the commissioners of the division for the space of 40 days before the certificate thereof shall be transmitted to such court, during which period of 40 days every such collector shall give due notice of such schedule to the several defaulters named therein, in such manner as the said respective commissioners shall direct, on pain that every collector neglecting so to do shall forfeit the like penalty as is imposed on collectors by the said several acts, or any of them, in other cases of neglect of duty; and it shall be lawful for every such defaulter within the like period to pay his or her arrears to the said collector or collectors, whose receipt shall be a sufficient authority to the said commissioners to discharge the arrears so paid from the said schedule; and it shall also be lawful for the said commissioners, if they shall see cause, to issue fresh warrants to collect the said arrears, or any of them, within the said period of 40 days, and during that period to use all or any the means or methods prescribed by the several acts relating to the said respective duties, for the recovery of the said arrears, or direct the said arrears to be levied by the respective collectors under their former warrant, as shall be most expedient; and all warrants to be issued for that purpose may be directed either to the said collectors, or to the high constable, constables, or other peace officers, within the limits of their division, or any one or more of them, or to any other person or persons whom the said commissioners shall think proper, with authority to levy by distress and sale, in the manner directed by the said acts respectively, the sums in arrear, together with all costs and expences attending the said process and the execution thereof; and the sums so levied, after deducting the said costs and expences, shall be paid to the receiver-general or his deputy,

The certificate of such schedule to be ground of process.

Schedule to remain with commissioners for a certain time, during which commissioners may levy warrants.

48 G.3. c.141. at such time and place as the said receiver-general shall appoint, and shall be discharged from the said schedule; and all high constables, constables, and other peace officers, within the said division, shall act in obedience to the directions of the said commissioners, and shall execute all such orders and process as shall be to them or any of them directed, for the recovery of the said arrears: provided also, that when the commissioners of the division shall certify to the commissioners for the affairs of taxes any reasonable cause for non-payment of, or for not proceeding to levy any part of the said arrears included in the said schedule, and that they have good reason to believe the same will be paid within a reasonable time, to be stated in such certificate, it shall be lawful for the said commissioners of the division to retain the said schedule in their hands, for such further time as shall be necessary, and as shall be mentioned in the aforesaid certificate.

In default of such schedule, receiver-general may certify the default to the exchequer.

3d. In default of such schedule being delivered within the space of three days as aforesaid, either to the receiver-general or his deputy, or to the said commissioners, it shall be lawful for the receiver-general, to whom the payments of the said duties shall not have been made in the proportions herein prescribed, and at the times above mentioned, and he is hereby required to certify to the said court of exchequer the amount of the duties remaining unpaid to the best of his knowledge and belief, and the particular ward, parish, or place, and the division where such failure hath happened, together with the names of the collectors of the said parish, ward, or place; and such certificate under the hand of such receiver-general or his deputy shall be a sufficient authority to the barons of the said court, or any one of them, to cause process by way of distringas to be issued out of such court against the said collector or collectors, upon which writ of distringas the sheriff or other officer to whom the said process shall be directed shall return such issues from time to time as such court or baron shall order, until a return of such schedule and arrears shall have been made to the said court; and immediate process shall thereupon issue for levying the said arrears out of and under the seal of such court, which levy shall not be remitted unless all the said duties in arrear shall be paid or satisfied before the return of such process.

Surveyor to attend the receiver-general, at his receipt.

4th. On each half-yearly day of payment, as herein is directed, the surveyor of the district shall, on notice thereof from the receiver-general or his deputy, attend with such of the duplicates of assessment as shall have been delivered to him, and as shall be required by the said receiver-general or his deputy, and shall assist him or them in adjusting the accounts of payments and of arrears, and shall also assist the collectors in making out their schedules of arrears to the best of his judgment.

Providing for payment of duties to receiver-general, where the arrears have been levied.

5th. The duties contained in any schedule of arrears, which shall be paid to such collector or collectors within the period of 40 days before mentioned, or within such further period as shall have been stated in the certificate of the commissioners for the retention of such schedule as before mentioned, shall be paid over to such receiver-general or his deputy, at such time and place as the said receiver-general shall appoint.

6th. Whenever any collector shall have advanced and paid to the receiver-general, or his deputy, any sum of money for or on account of the duties assessed on any other person, whether at his request or not, it shall be lawful for such collector, in default of repayment to him at any time within the space of six calendar months after such payment, to levy the said duties by the like ways and methods as such collector might have levied the same before such payment thereof to such receiver-general, or his deputy, and as if such duties had not been paid or satisfied. 48 G.3. c.141. Collectors advancing duties empowered to levy the sum paid.

§ 2. This act, as to all matters contained in the rules of the preceding clause, shall commence and take effect from the 31st of *December*, 1808, in respect of all assessments to be made for any year after the 5th of *April*, 1809. Commencement of the rules.

§ 3. In cases of surcharge under the said acts relating to the duties of assessed taxes, no list, affidavit, or oath shall be required of any article, matter, or thing which the party surcharged shall prove to the satisfaction of the commissioners of appeal to have been duly returned before the date of the said notice, in any list delivered by the said party for the year for which such surcharge shall be made; and either the said return, or a certificate thereof, signed by two commissioners of the division where the return shall be made, shall be received conclusively as proof thereof; and the return or returns required by the said acts shall be deemed full, perfect, and complete returns, if the amended return, together with the return before made, shall include all articles, matters, and things for which the party so surcharged shall be chargeable; and no person shall be liable to surcharge for any article, matter, or thing before returned by him or her, according to the directions of the said recited acts or of this act. No list of any article surcharged shall be required, if proved to be returned before the date of the notice.

§ 4. When the commissioners of any division shall have fixed the day or days of appeal against the surcharge made by any inspector or surveyor, under the said acts or any of them, and shall have caused due notice thereof to be given, according to the directions of the said acts, and the said inspector or surveyor having like notice thereof, shall wilfully neglect to attend the meeting or meetings of the said commissioners, held in pursuance of such notices, whereby the commissioners shall be prevented in proceeding to hear such appeals, it shall be lawful for the said commissioners to allow to each appellant attending such meeting a reasonable compensation for such attendance, to be settled by the said commissioners, and paid to such appellants respectively by the receiver-general of the said duties, or his deputy, on the production of the certificates of any two or more of the said commissioners testifying such allowance. Penalty on inspectors and surveyors neglecting to attend meetings of the commissioners.

§ 5. It shall be lawful for H. M., or the lords commissioners of the treasury, or any three of them, for the time being, or the high treasurer for the time being, from time to time to appoint for *England* and *Wales* such person or persons, not exceeding ten in number at any one time, as H. M., or the said commissioners of the treasury, or the high treasurer for the time being, shall think proper to be inspectors-general for the special purposes of this act, hereinafter specified and declared; and to allow to such inspectors-general such reasonable salaries, charges, and expences, H. M. &c. may appoint 10 persons to be inspectors-general, and allow them salaries, &c.

48 G.3. c.141. as may be necessary for their pains in executing this act; and no person to be appointed inspector-general under this act shall be entitled to amend any assessment made under the said acts, or to surcharge any person or persons in respect thereof; nor shall any such person have, or receive, or claim any advantage or emolument from any assessment or surcharge to be made under any of the said acts, nor any other emolument than the salary and allowance authorised by H. M., the commissioners of the treasury, or the high treasurer as aforesaid.

The powers to be vested in the Inspectors-General.

To visit inspectors and surveyors.

1st. It shall be lawful for such inspectors-general to visit from time to time each inspector and surveyor acting in the execution of the several acts relating to the duties of assessed taxes within the limits of the circuit for which such inspector-general shall be appointed, and to examine all or any of the books and assessments, and duplicates, or certificates of assessment or surcharge in the hands or power of such inspector or surveyor; aud also to enquire into the conduct of every such inspector and surveyor in the execution of their respective offices, and into their fitness and capacity to execute the same, and to report from time to time on the several matters aforesaid to the commissioners for the affairs of taxes; and every such inspector and surveyor shall attend such inspector-general at such time and at such place within the district of such inspector and surveyor as the said inspector-general shall appoint, and shall have given three days' notice of, to such inspector or surveyor.

To administer an oath to inspectors and surveyors.

2d. It shall be lawful for every such inspector-general to administer to any such inspector or surveyor, whenever he shall see occasion to examine him or them in any matter touching the execution of the said acts, an oath that he shall true answer make to all such questions as shall be demanded of him; and the substance of such answer or answers as such inspector or surveyor shall give shall in his presence be reduced into writing, and read to him, with liberty to alter or amend the same in any particular; and he shall sign his assent to the same in his own name, and in his usual manner of writing or signing the same.

Inspector-general may report to commissioners of division.

3d. It shall be lawful for every such inspector-general, whenever he shall see occasion, to report to the commissioners of the division on any matter or thing touching the execution of the said acts or this act in relation to any assessment or assessments in such division, or touching the conduct of any clerk to such commissioners, or of any assessor or collector, together with the opinion of such inspector-general thereon; and every such inspector-general shall transmit a duplicate of such reports to the commissioners for the affairs of taxes; and whenever any inspector-general shall have reported to the commissioners of any division any such matter or thing which, in the opinion of such inspector-general, shall require the particular consideration of the commissioners of such division, it shall be lawful for them to hold a meeting for that purpose, and they are hereby required to hold such meeting within a reasonable time after such report, at which meeting such inspector-general may attend for the purpose of ex-

plaining the matter or matters contained in the said report, and of suggesting for their consideration the propriety of adopting such order or orders as may be agreed upon by the major part of the commissioners of such division who shall be present at such meeting. 48 G.3. c.141.

4th. If any inspector-general, or any commissioner for the division, who shall have been present at any meeting of commissioners at which the report of such inspector-general shall have been taken into consideration as aforesaid, shall apprehend the determination made by the commissioners at such meeting on the said report, or any of the matters therein contained, to be contrary to the true intent and meaning of the said acts relating to the said duties respectively, or any of the said acts, it shall be lawful to and for such inspector-general, and to and for any one or more of the commissioners for the division, present at the time of such determination respectively, to require a case to be prepared, and signed by the said commissioners for the division; in which case the said commissioners shall state specially the part or parts of the report of the said inspector-general, and the facts on which the question arose, together with their determination thereupon, and any other circumstances influencing the said commissioners in such their determination; and which case the said commissioners, or the major part of them then present, are hereby required to state and sign accordingly, and to cause the same to be transmitted to the commissioners for the affairs of taxes, who shall forthwith submit the same to the judges of the courts of record at *Westminster;* and such judges, or any two or more of them are hereby required, with all convenient speed, to return an answer to such case so transmitted, with their opinion thereon subscribed thereto, and what ought under all circumstances to be done therein; according to which opinion and directions so certified, the determination of the commissioners which shall have been so objected to, and which shall be stated in such case, shall be confirmed, reversed, altered, or amended, as the case may require; and if any assessments shall be depending on such determination of the said commissioners, the same shall also be altered or confirmed according to the said opinion.

In certain instances, a case to be transmitted to commissioners for taxes.

§ 6. None of the provisions of this act hereinbefore contained shall extend to *Scotland*.

Not to extend to Scotland.

§ 12. The several parishes and places, or parts thereof, set down in the first column of the following schedule, and which have been heretofore charged to the said duties, in the respective divisions mentioned in the second column of the said schedule, and set opposite thereto respectively, shall, after the passing of this act, be charged to the said duties in the divisions, and shall be subject to the jurisdiction of the commissioners, and persons acting under them, and to the inspectors and surveyors of the division mentioned in the third column of the said schedule, and set opposite thereto respectively.

Certain places where to be assessed.

48 G.3. c.141

Schedule referred to by the above Clause.

Description of Parishes or Places.	Heretofore charged in	Hereafter to be charged in
Part of the parish of *Wokington*, situate in the counties of *Berks* and *Wilts* - - -	Hundred of *Amesbury, Wiltshire.*	Hundred of *Sonning, Berkshire.*
Part of the parish and town of *Morpeth*, in the county of *Northumberland* - -	*Castleward, Northumberland.*	*Morpeth* ward, *Northumberland.*
Part of the parish of *Gillingham*, in the county of *Kent*, called the *Grange*, parcel of the liberty of *Hastings*, in the county of *Sussex* - - - - -	Town and port of *Hastings*, county of *Sussex*, and liberty thereof.	*Rochester* division, part of the *Lathe* of *Ford*, county of *Kent*.
Bushton, part of the parish of *Cleeve Pyhard*, in the county of *Wilts* - - - -	Hundred of *Elstub* and *Everley, Wiltshire.*	Hundred of *Kingsbridge, Wiltshire.*
Little Hinton, in the county of *Wilts* -	The same.	The same.
Wroughton, in the county of *Wilts* - - -	The same.	The same.

Exceptions.

§ 13. Nothing in this act shall be construed to extend to any of the cases hereinafter specified; that is to say,

1st. To the duties granted by stat. 38 *G*.3. *c*. 5. by way of a land-tax.

2d. To the duties granted, or to be granted, by any act or acts of parliament for one year, for the service of such year.

Commencement of the act, where other provision is not made.

§ 15. This act (except where other provisions are made for the commencement thereof,) shall commence from the 5th of *April*, 1808, on all assessments to be made for any year commencing after that day.

§ III. Of the Assessed Taxes.

Under the management of the commissioners for taxes.

By the 38 *G*.3. *c*.40. § 41. The management of the assessed taxes is transferred to the commissioners for the affairs of taxes.

43 G.3. c.161.

By 43 *G*. 3. *c*. 161. § 84. and 85. The several duties imposed by the following acts; — *viz*. 20 *G*. 2. *c*. 3. *c*. 42. — 21 *G*. 2. *c*. 10. — 26 *G*. 2. *c*. 17. — 2 *G*. 3. *c*. 8. — 6 *G*. 3. *c*. 38. — 17 *G*. 3. *c*. 39. —

18 *G.* 3. *c.* 26. — 19 *G.* 3. *c.* 59. — 21 *G.* 3. *c.* 31. — 24 *G.* 3. (*st.* 2.) *c.* 31. *c.* 38. — 25 *G.* 3. *c.* 43. *c.* 47. — 26 *G.* 3. *c.* 79. — 29 *G.* 3. *c.* 49. — 32 *G.* 3. *c.* 2. — 36 *G.* 3. *c.* 15. *c.* 16. *c.* 117. *c.* 124. — 37 *G.* 3. *c.* 106. *c.* 107. *c.* 134. — 38 *G.* 3. *c.* 40. *c.* 41. *c.* 80. *c.* 93. — 41 *G.* 3. *c.* 9. *c.* 40. *c.* 62. *c.* 69. — 36 *G.* 3. *c.* 17. — 41 *G.* 3. *c.* 71. — 42 *G.* 3. *c.* 34. *c.* 37. *c.* 100. — are repealed; excepting as to arrears and penalties; and such provisions of the said acts as relate to other things; which arrears under former acts the commissioners and other officers under this act are empowered to levy.

By stat. 45 *G.* 3. *c.* 13. Additional duties were imposed upon horses used in riding, and drawing certain carriages, which duties were consolidated with those granted by the 43 *G.* 3. *c.* 161. 45 G. 3. c. 13.

By stat. 46 *G.* 3. *c.* 78. An additional duty of 10*l.* *per cent.* upon the amount of the duties granted by the two last acts was granted. 46 G. 3. c. 78.

By stat. 48 *G.* 3. *c.* 55. § 1. In lieu of those several duties, others were granted as in the schedules hereafter annexed; and by § 2. of the same act the former duties were repealed, and those imposed by this act are to be levied, &c. under the provisions of stat. 43 *G.* 3. *c.* 161.: and by § 3. the stamp-duty on game licences under 44 *G.* 3. *c.* 98. is repealed, and a new duty is imposed by § 4.; which will be found in the schedule (L). 48 G. 3. c. 55.

By § 5. The said consolidated and new duties shall be assessed, &c. under the provisions of the 43 *G.* 3. *c.* 99. *c.* 161., 45 *G.* 3. *c.* 5. *c.* 71. and the 46 *G.* 3. *c.* 84. How assessed.

By § 6. Commissioners for the former acts shall be commissioners for the present act.

By stat. 50 *G.* 3. *c.* 104. § 1. 2. and the schedules to that act annexed, certain new duties are imposed in respect of contracting gardeners, taxed-carts, and carriages with less than four wheels: and the schedules are declared to be as if annexed to the corresponding schedules of the 48 *G.* 3. *c.* 55., and the duties to be placed under the regulations of that and former acts. 50 G. 3. c. 104.

By stat. 52 *G.* 3. *c.* 93. Additional duties were granted on male servants, (sched. C.); carriages, (sched. D.) and the makers and sellers thereof; horses, &c. (sched. E.); and other horses, &c. (sched. F.); dogs, (sched. G.); horse-dealers, (sched. H.); in respect of killing game or other things, (sched. L.); which last schedule also contains certain provisions as to the mode of recovering penalties, and appealing against convictions in certain matters relating to game. 52 G. 3. c. 93.

§ 2. Consolidates these duties with former duties.

§ 3. Extends the provisions and regulations of the acts in force at the passing of this act in relation to the duties granted by the 48 *G.* 3. and 50 *G.* 3.; and § 7. provides that persons liable to the new or consolidated duties shall prepare true and particular lists according to the said several statutes; which lists shall be prepared in the way directed by this act.

By stat. 56 *G.* 3. *c.* 66. (amended and continued by 58 *G.* 3. *c.* 16. until 5th *April*, 1819, and further continued by 59 *G.* 3. *c.* 13. § 1. until the 5th of *April*, 1821) the duties in respect of horses *bonâ fide* kept for the purpose of husbandry are discontinued, and others imposed on a reduced scale. 56 G. 3. c. 66.

By stat. 57 G. 3. *c.* 25. For explaining and amending the 48 *G.* 3. *c.* 55. certain tenements which have been occupied as dwelling- 57 G. 3. c. 25.

houses, when employed solely for the purposes of trade, or as warehouses, are exempted from duties.

58 G.3. c.17. By stat. 58 *G.* 3. *c.* 17. New duties are imposed upon four-wheeled carriages constructed and drawn in the manner therein described,

59 G.3. c.13. By stat. 59 *G.* 3. *c.* 13. The duties upon certain horses and mules, granted by 48 *G.* 3. *c.* 55. and 52 *G.* 3. *c.* 93. are reduced.

59 G.3. c 118. By stat. 59 *G.* 3. *c.* 118. Certain exemptions are allowed from duties on persons employed as shopmen, grooms, stable-boys, or helpers in stables; and certain relief is granted in respect of persons employed as travellers on foot, by houses in trade, by § 5. Under gamekeepers are not to be assessed as additional servants, but after the rate of 10*s.* *per annum,* unless employed in some other capacity, by which they are liable to be assessed as servants under 52 *G.* 3. *c.* 93.

The various regulations of the 43 *G.* 3. *c.* 161. and subsequent acts, it is attempted to arrange under the following heads:

(1.) *Qualifications and Powers of Commissioners, Assessors, and Collectors.*

(2.) *Of making Assessments, and returning Lists of Persons liable to the Assessed Taxes.*

(3.) *Regulations concerning the amending of Assessments, and making Surcharges; and herein of Appeals.*

(4.) *Provisions for facilitating Payment of the Duties.*

(5.) *General Regulations, relative to the Execution of the Act.*

(6.) *Allowances in respect of Children.*

(7.) *Duties.*

(8.) *Act granting Exemptions in certain Cases in respect of Servants, Carriages, Horses, and Dogs, kept in* G. B. *and* Ireland *respectively.*

(1.) Qualifications and Powers of Commissioners.

43 G.3. c.161. Commissioners of the land-tax, who shall be duly qualified, and having taken the oaths, commissioners for this act.

By stat. 43 *G.* 3. *c.* 161. § 6. For the better execution of this act, and for collecting, levying, and paying the several sums hereby made payable, all the persons who now are, or for the time being shall be commissioners for executing the land-tax act (38 *G.* 3. *c.* 5.); and who shall be respectively qualified to act, and shall have taken the oaths as directed by stat. 43 *G.* 3. *c.* 99. shall be commissioners for this act, and the several sums so levied shall be under the management of the commissioners of taxes.

Commissioners, &c. to execute the powers of 43 G.3. c.99. with respect to the duties hereby granted.

§ 8. And the assessors and collectors appointed by such commissioners for any parish or place, in pursuance of stat. 43 *G.* 3. *c.* 99. shall be assessors and collectors of the several duties hereby granted; and the commissioners shall cause notice to be given to such persons, that they respectively are appointed such; and the several commissioners, inspectors, surveyors, assessors, and collectors, are hereby empowered to do all things in relation to the duties hereby granted, which they respectively are empowered to do in relation to the duties mentioned in the 43 *G.* 3. *c.* 99.; and shall severally be liable to the like penalties for any neglect or

omission, or any fraud or abuse, as are thereby inflicted on such officers for the like offences. 43 G.3. c.161.

(2.) Of making Assessments, and returning Lists of Persons liable to the Assessed Taxes.

By stat. 43 *G.* 3. *c.* 161. § 25. The assessors shall, for every year, within 21 days after the commencement of the respective duties for each year, cause general notices to be affixed on the doors of the church or chapel, or market-house or cross (if any) of the city, parish, or place for which such assessor shall act; and if there be none, then on the nearest church or chapel-door of any adjoining parish, requiring all persons residing in the said city, &c. to make out and deliver to the assessors, within 14 days after the date of such notice, such lists or declarations as are herein required; and such general notice so affixed, shall be sufficient notice of the time within which such returns shall be required to be made to all persons residing in such city, &c.; and such affixing shall be deemed good service of such notice to all persons within the said limits; and the respective assessors shall replace the said notices from time to time (if necessary) during the said 14 days previous to the time required for the delivery of such lists or declarations; and every person wilfully tearing, defacing, or obliterating any such notice so affixed, shall forfeit, for every offence, not exceeding 20*l.* nor less than 5*l.*

Assessors within certain periods to give general notices, requiring lists to be delivered; which shall be deemed sufficient notice.

Penalty for defacing such notices.

§ 26. Beside such general notices, the respective assessors shall within the periods before mentioned, in every year, give or leave at every dwelling-house, where any person liable or supposed to be liable to the several duties, or any of them, shall usually reside within the limits of the places for which such assessors act, one notice for the occupier thereof; and where such dwelling-house shall be let in different apartments, and occupied distinctly by different persons or families, a like notice for the occupier of each distinct story or apartment, provided any person liable or supposed to be liable shall reside there; and also a like notice for every person so liable, then residing in such dwelling-house as a lodger or inmate, within the knowledge of such assessor or assessors, requiring them to produce, within 21 days next ensuing, the date of such notice, a list or declaration in writing, in the form and manner hereinafter required.

Assessors also to leave notices at every dwelling-house where any person liable to the duties shall reside.

§ 28. And every person liable to the said duties shall, in every year subsequent to the respective days appointed for the commencement of the same, within six weeks thereafter, whether any previous notice for that purpose shall have been delivered or not, cause to be prepared and delivered to the respective assessors lists of the greatest number of servants or other male persons retained or employed, and of carriages, horses, mules, and dogs kept by such person, or of his having used or exercised the trade or business of an horse dealer, or coachmaker, or maker of carriages, or of a seller of carriages by auction or on commission; or of having worn or used hair-powder, or any armorial bearings or ensigns, at any one time in the course of the preceding year ending on the then preceding 5th of *April*; which lists shall be prepared as here prescribed, and according to the directions of this act; and shall

Lists to be returned annually within six weeks from the days appointed for the commencement of the duties in each year.

43 G. 3. c. 161. Charges, how to be made. renew the same in the same manner in every year so long as he shall be liable to any of the said duties; and such persons shall be annually charged to the duties, according to such lists; and the assessments shall be for the year in which the returns shall or ought to have been made.

Assessors to make an assessment according to the best information they can obtain, upon persons refusing or neglecting to deliver lists. Such assessments not to be subject to appeal, except under certain circumstances. § 30. And if any person shall neglect or refuse to make out, sign, and deliver any such lists within the times herein mentioned, then the assessors shall, from the best information they can obtain, make an assessment upon such person in respect of any of the duties, according to the rates specified in the schedules, and shall include the same in the certificate of assessment to be delivered to the commissioners as herein directed; and every assessment made upon any such neglect or refusal, shall be final upon the person thereby charged, without liberty of appeal, unless such person shall prove that he was not at his place of abode at the time of delivering such notice, nor between that day and the time limited for delivering such list to the assessor, or unless such person shall prove such other excuse for his default, as the commissioners shall think sufficient. *See also* stat. 48 *G.* 3. *c.* 141. § 1. *No.* 3. *rule* 2. *post.*

Assessors not bound by the lists delivered, in what case. § 31. And the said assessors shall not be bound by the lists delivered, but may make a true assessment on the party, if they find on due examination that any article or thing that ought to have been inserted in such list, is omitted.

Occupiers of houses to require declaration or returns from lodgers and inmates. § 32. And every occupier, in whose dwelling-house or apartment, any person liable to any of the duties hereby made payable, shall reside as a lodger or inmate, shall, for the purpose of making accurate returns, cause the contents of the notice left at his dwelling-house to be read over and made known to each lodger or inmate not having received a like notice, requiring them respectively to declare to such occupier, and attest the return to be made, whether he be liable to or exempted from either of the said duties, or whether he have another place of ordinary residence where he intends to be charged; and every person so resident, being thereunto required, shall make such declaration on pain of forfeiting 50*l.* for such refusal. A like penalty is also imposed on occupiers of dwelling-houses neglecting or refusing to require or insert the same in their respective lists.

Penalty on their not returning lists. § 52. And every occupier of any dwelling-house or separate apartment, who shall not return such list of lodgers or inmates, or shall omit any who ought to be returned therein, and who to his knowledge shall have worn hair-powder or used any armorial bearings within the period for which the return should be made, shall be liable to prosecution for the penalty hereby inflicted, and deemed guilty thereupon, whether it shall appear that the person so omitted or not returned hath or hath not made a return for himself at any other place, or hath or hath not been, or is liable to be prosecuted for any offence against this act; and the conviction of any such offender shall not exempt the persons omitted or not returned, from paying the duty imposed, or from prosecution or punishment for any offence against this act. Provided that any lodger or inmate, residing in any dwelling-house at the time of making such return, who shall have an ordinary place of residence elsewhere, shall be returned as ordinarily residing in such other place.

§ 33. And the assessors shall, upon receipt of any list containing the name of any lodger or inmate returned liable, give or leave the like notice for every such person to prepare and produce, within the like period, a list or declaration signed as aforesaid; who shall, within 21 days after such notice left, make out and sign a list or declaration, on pain of forfeiting 50*l*. for neglecting to deliver any such list or declaration.

43 G.3. c.161. Assessors to leave notices for lodgers or inmates liable to the duties.

§ 34. And every person having divers places of residence, or who shall keep any servants or other male persons herein described, carriages, horses, mules or dogs, at divers places, and every person being an inmate or lodger at the time of such notices being given as aforesaid, and having an ordinary residence at some other place, whereat such person ought to be charged, shall deliver all such lists at each such place, and shall insert in every such list the name or description of each person, article, and thing, for which such person is liable, or which ought to be returned according to the directions of this act; and shall also in every such list specify the particular persons, and number of each description of articles, respectively intended to be paid for within the limits of the district, &c. where such list shall be delivered: and shall also at the same time make his declaration, to be inserted in such list, and signed by him, specifying the particular county or parish wherein each such other place of his residence is situate, and also the particular county or parish wherein the said duties, or any part thereof, are or is intended to be paid.

Persons having divers places of residence, or keeping servants, carriages, &c. at divers places, and lodgers or inmates having an ordinary residence at some other place, to deliver lists at each.

§ 35. And if any person having delivered his declaration to pay the said duties in any other parish or place, than in that where such list shall be delivered, shall not return a list accordingly, in order to his being regularly charged by the assessors there, he shall forfeit 50*l*.

Penalty on such persons refusing to deliver lists.

§ 36. And every person claiming exemptions hereby allowed, or by any of the schedules(*a*) (C, D, E, F, G, H, I, or K,) hereunto annexed (except the royal family, in such case where they are specially exempted,) shall make a due return thereof, and declare the cause of such exemptions, such declarations to be specified in or annexed to the lists by him delivered; and if any dispute shall arise relative to such exemption, the proof thereof shall lie on the person claiming; who, on any charge or surcharge before such commissioners, or on any suit or prosecution, shall be permitted to allege the same on oath or affirmation, or to prove the same by lawful evidence to be produced by him: but no such exemption shall be allowed unless the same, and the cause thereof, shall have been so duly returned to the assessor.

Claims of exemption (except with respect to the royal family) to be returned to the assessors.

Proof to lie on the party.

§ 37. And if any person liable to any of the said duties, in respect whereof a list or declaration ought to be delivered, or coming within any of the exemptions contained in this act, shall neglect to deliver a list or declaration according to this act where the same ought to be delivered, or shall omit any person, description, or thing which ought to be contained therein, or shall make an untrue return of any particular therein, the offender shall forfeit 50*l*. over and above any duty chargeable as aforesaid.

Penalty for neglect in delivering lists or declarations, or for omissions therein, and for making an untrue return.

§ 38. But the penalty hereby last imposed for omissions in any

(*a*) This applies to the corresponding schedules in stat. 48 *G.3. c.55.*

43 G.3. c.161. such lists shall not be sued for, when the party has been surcharged and assessed in double the duty, or in any proportion thereof.

Householders of lodging-houses to keep books containing entries of certain particulars which are to be inspected by assessors or surveyors, and copies thereof to be delivered at certain periods.

§ 43. And every inhabitant householder of any lodging-house, in which any lodger shall reside liable to any of the said duties, of which lists are required to be made, shall enter in a book an account of every person so liable; which books shall, at all reasonable times, be inspected by the assessors, surveyors or inspectors of the place where such person shall reside. And every such householder shall, within 20 days after the 5th *January* and the 5th of *April*, the 5th of *July* and the 5th of *October* in every year, deliver a true copy in writing of every entry made in such book during each preceding quarter, to the assessor for the use of the inspector or surveyor, or to such surveyor or inspector; and, when required by such surveyor or inspector, every such person, or his chief servant or manager, shall make oath or affirmation of the truth thereof; every copy of which shall, to the best of his knowledge or belief, express the christian and surname of every person therein required to be entered, and the place of his usual residence; on pain of forfeiting 50*l.* for neglecting to keep such account, or to deliver such copy thereof, or for wilfully omitting any description that ought to be inserted therein.

Forms, for entering such accounts to be prepared by the tax office.

§ 44. Forms for entering such accounts shall be prepared by the commissioners for taxes, and issued to every person applying for the same and leaving his name and place of abode in writing at the tax-office, or with any surveyor for the district where such applicant shall reside: and every such account shall at the end of the year (all such entries being required to be first duly made) be signed by the party with his own proper-name, in his usual manner of writing, and returned in like manner. And, in default of such application, the party shall provide, fill up, sign and deliver proper forms to the assessor, surveyor or inspector, in like manner, on pain of forfeiting 50*l.* for neglecting to deliver up such accounts within the time limited.

Commissioners of taxes to cause certain lists to be made out for inspection of persons applying; copies whereof to be admitted as evidence.

§ 49. And the said commissioners may cause lists of persons having made returns, or being charged with the duties, to be made out for the inspection of persons applying for that purpose; and may authorise copies thereof to be made by the inspectors, surveyors, or other officers employed by them, in such manner and at such times as the commissioners shall think fit: which copies, signed by such inspector or other authorised officer, shall be admitted as evidence in all courts, and before all persons acting in the execution hereof; and for which copies the fee of 1*s.* may be taken for the return of each person.

Lists of persons charged may be published under direction of the treasury.

§ 50. The commissioners of taxes may from time to time, under the direction of the lords of the treasury, publish lists of the persons charged, in the respective counties, divisions and places, in such manner as they shall direct. And every person wilfully defacing, tearing or removing any such list from any church or chapel door or market-cross, whereon the same shall be affixed, shall forfeit 5*l.* for every offence.

(3.) Regulations concerning the amending of Assessments, and making Surcharges; and hearing of Appeals, and Cases for the Opinions of the Judges.

43 G.3. c.161.

By stat. 43 *G.*3. *c.*161. § 62. The respective assessors, acting under this act, shall bring in their certificates of assessments in writing under their hands, within the time limited by stat. 43 *G.*3. *c.*99.(*a*) to be verified as therein directed, of every dwelling-house, inhabited or not inhabited, within the limits of those places for which they act, and of the number of windows or lights in each, and the full yearly rent which every such dwelling-house, with the offices and premises hereby charged, is really worth, estimated according to this act, together with the names and surnames of the several occupiers or inhabitants of each house, and also the greatest number of male servants, or other male persons herein described, carriages, horses, mules, and dogs, which shall have been retained, kept, or used within the then preceding year, for which the persons retaining, keeping, or using the same, ought to be assessed to any of the duties hereby made payable for the current year, within the limits of those places for which they act, and the names and surnames of such several persons, and also the names and surnames of all persons within such limits liable to the duties, in respect to their trade or business of an horse-dealer, or of their trade or business of a coachmaker, or maker of carriages, or seller of carriages by auction or on commission, or in respect of hair-powder or any armorial bearings or ensigns worn or used by them, and of the several sums they respectively ought to pay by virtue hereof in each case respectively, without concealment or favour; and also the names and surnames of those who have claimed exemptions, and the causes of such exemption; under the penalty contained in stat. 43 *G.* 3. *c.* 99. observing the regulations thereof as to the time of bringing in such certificates.

Assessors to bring in certificates of assessments for all the duties, with the names of those who have claimed exemptions, to be verified on oath, and to be delivered at the times, and according to the provisions of the regulating act.

§ 63. And the surveyors, or inspectors, appointed as herein-mentioned, shall inspect and examine all the returns made by any persons, according to the directions of this act, and also all the assessments made for any parish or place, as well before as after the commissioners shall have signed and allowed the said assessments, and, before such allowance, may correct and amend the same, if they shall see fit; and every person in whose custody any lists or assessments shall be, shall upon the request of any such surveyor or inspector, produce and deliver the same into his custody for the purposes of this act, taking his receipt for the same; and such surveyor or inspector is hereby authorised to take charge of the same, until he shall have taken such copies of or extracts from the same, as may be necessary for his and their better information,

Inspectors and surveyors to examine returns and assessments, and amend the same before they are allowed by the commissioners.

Lists to be delivered to the surveyors when required, and assessments to be produced to them for the purpose of taking copies or extracts.

§ 63. If any surveyor or inspector shall, after any such lists or assessments shall be so respectively made out, signed, and allowed as aforesaid, find that any person who ought to be charged with

(*a*) The regulations of this act are stated *ante*, § I. of this title.

43 G.3. c.161.

After assessments are allowed, the surveyor to certify omissions to the commisioners by way of surcharge.

Procedings upon such charges.

any of the said duties shall have been omitted to be charged, or shall have been under-rated, or that any person liable to any of the said duties, in respect of which such lists or declarations ought to have been delivered, hath not made the return hereby required, or hath omitted any person or thing which ought to have been returned, so that he shall not have been charged to the amount which ought to be paid by him, or that any exemption shall have been claimed which is not hereby allowed; then the said surveyor, &c. shall certify the same in writing under his hand, together with an account of every default and omission, with the name or description of the person or thing not returned or omitted, to the best of his knowledge and belief, and the full amount of the duty which ought to be paid by way of surcharge, to any two or more commissioners for this act, in order to have the same rectified in the said assessment; and such commissioners, upon delivery of any such certificate, and upon oath being first made, that the notice hereinafter directed was given to, or left in writing at the dwelling-house or other place of abode of the person so surcharged, shall sign and allow the said surcharges, and cause the said assessments to be rectified, and the said duties to be levied accordingly. And the inspectors, &c. shall give to every person so surcharged, or leave at his last or usual place of abode, notice in writing of such surcharge, and of the amount charged by virtue of such certificate, which surcharges the said inspectors, &c. may make from time to time, and at such times as is directed by stat. 43 G. 3. c. 99.; and such surcharges shall be made in the full duty which ought to be charged by virtue of such certificate, in respect of the duties contained in schedules (A) and (B), and in double the duty which ought to be charged by virtue of such certificate, in respect of any of the duties contained in the other schedules hereto annexed.

A. B.

Assessments or surcharges not to be impeached on account of mistakes in the names or descriptions.

§ 64. And no assessment or surcharge made by virtue hereof, shall be impeached by reason of any mistake or variance in the christian or surname of any person liable to any of the duties, or of any servant or other male person herein described, or in the description of their employments, nor by reason of any mistake in the description of any carriage, horse, mule, or dog, as required by this act, or the amount of the duty surcharged, whether such mistake or variance shall appear in the notice and certificate to be delivered or made in such case, or in either of them; provided the notice of surcharge be delivered to, or left at the place of abode of the person intended to be so surcharged, according to the directions of this act, and the person intended to be described, shall be liable to the said duties, or shall be a servant of, or otherwise employed by, the person so surcharged, or the carriage, &c. intended to be described, shall belong to, or the duty intended to be described, shall be chargeable on such person.

Double duty may be avoided by making a return before the day of appeal with an affidavit annexed.

§ 65. And any person to whom such notice of surcharge shall be given, on occasion of his having neglected to make the return required, at any time previous to the time appointed for hearing appeals next after the delivery of such notice, may make out and deliver to the surveyor or inspector who shall have delivered the notice of surcharge, a true and complete list or declaration in the forms hereby directed, and as the case may require; so that he may, from such last-mentioned list or declaration so delivered,

be charged to the said duties, the full sum at which he ought to be charged by virtue of this act. But to every such list or declaration, there shall be annexed an affidavit in writing to the effect hereinafter mentioned; and if the surveyor or inspector shall be satisfied therewith, then he shall certify such return and affidavit to two or more commissioners, with the amount of the duty to be charged, who shall thereupon cause the assessment to be made according to such certificate, and the same rate of duty as set forth in the schedules hereunto annexed, to be charged on the person making such return.

43 G.3. c.161. Surveyor, if satisfied therewith, to certify the same to the commissioners, and the party to be charged accordingly at the single duty.

§ 65. But, if upon examination of such list or declaration, or such affidavit, the surveyor or inspector shall see just cause to object thereto, he shall thereupon certify such return and affidavit, together with the cause of his objection, to two or more commissioners, who shall thereupon cause the assessment to be made according to such last-mentioned certificate, in double the amount of the duty at which such person shall be surcharged; and from which no abatement shall be made unless on appeal as hereinafter is directed, of which certificate notice shall be given by the surveyor to the person to be charged thereby.

If the surveyor is dissatisfied, he is to state his objection to the commissioners, and the assessment is then to be made in the double duty, subject to appeal.

§ 66. Every such affidavit shall allege and declare in substance, or to the effect as follows, (that is to say;)

Form of affidavit in cases of surcharge where no return has been made.

"*THAT the deponent was not at his or her dwelling-house, or other place of abode, at the time appointed for the fixing, or delivery of general or other notice, for making a return as required by this act, nor between that day and the time limited for making such return to the assessor, and that he or she had not any such notice; or, that he or she was disabled by sickness from making such return; or that the non-delivery of such return was occasioned by the following unavoidable mistake or accident, without any intention to defraud the revenue; videlicet* [here set forth the cause of such default,] *and that the return annexed to this affidavit is a full, perfect, and complete return of all matters and things required of the said deponent by this act, to the best of his or her judgment:*"

Which affidavit may be taken before any commissioner acting for the place where the surcharge shall be made, or where the party surcharged shall reside, and shall be signed by the party making the same.

§ 67. And any person to whom such notice of surcharge shall be given on occasion of his having omitted, in the return made, any person, description, article, or thing, or of having claimed any exemption not allowed by this act, may amend such return, by delivering a new return according to the directions before given, to which an affidavit shall be annexed to the effect hereinafter mentioned; and the surveyor or inspector shall be at liberty to certify his satisfaction therewith, or his objection thereto, in the manner hereinbefore directed, according to which certificate the party surcharged shall be assessed in the single duty to the full amount, or in the double duty on the amount of the duty so surcharged, as the case may require, subject to the like power of appeal from the double duty, and to the like proceedings, before given and directed.

On surcharges for any omission in a return, the double duty may be avoided by making a new return with an affidavit annexed.

Proceedings thereon.

43 G. 3. c. 161

Form of affidavit in cases of surcharge for defective returns.

§ 68. And every such last-mentioned affidavit shall declare the cause of each omission, or claim of exemption, as well to matter of law as fact, whether the deponent shall persist in such omission or claim, or not, and also that the return annexed to this affidavit is a full and complete return of all things required of the said deponent by this act, to the best of his judgment and belief, and that such omission or claim was not made with intention to defraud the revenue; which said last-mentioned affidavit shall be made and signed in the manner before directed.

Appeals how to be heard and determined.

§ 69. But an appeal may be made from any assessment or surcharge as aforesaid, and heard and determined under the regulations of stat. 43 *G.* 3. *c.* 99.: and such appeal may be made in the like cases as are therein mentioned, and also in the case hereinafter mentioned.

Persons overcharged may appeal to the commissioners. On hearing appeals, the appellant to produce lists when required, and to verify the same upon oath.

§ 70. If any persons shall think themselves over-charged or over-rated by any certificate of any inspector or surveyor, or by any assessment to be made in pursuance of such certificate, they may appeal to the said commissioners in such manner as they may appeal from any original assessment or surcharge by the regulations of stat. 43 *G.* 3. *c.* 99.; and upon hearing any such appeal, or the appeal against any such original assessment or surcharge, the appellant shall, in all cases where a list or declaration shall or ought to have been delivered by him to the assessor, produce before the said commissioners a true and complete list and declaration, as the case may require, and verify the same on his oath or affirmation.

Double duty to be assessed upon surcharges confirmed on appeal, unless in certain cases.

§ 71. The assessment shall be in the double duty upon every surcharge confirmed or allowed by the commissioners upon the certificate of the surveyor or inspector as aforesaid, except where sufficient returns upon affidavit have been made; which sum shall be added to the assessment, and inserted in the duplicates of the collectors, and collected and levied therewith, and paid to the receiver-general.

Commissioners may remit any part of the double duty not exceeding one-half; and the overplus above the rates of duty to be paid to inspectors or surveyors by receivers-general.

But, upon every such appeal, if the commissioners shall be of opinion that there was any just cause of controversy on the part of the appellant, and that the alleged default or claim was not wilfully made, and with intent to defraud the revenue, the commissioners who shall have determined the said appeal, may, although they shall have confirmed the surcharge, at the same time remit and strike off any part of the double duty, not exceeding one moiety of the charge above the rates of duty prescribed by the said schedules; and the assessor, &c. so making such surcharge, shall receive for his own use, from the receiver-general, the overplus of the sum so charged above the said rates of duty, which overplus any two of the commissioners for this act, who shall have confirmed such surcharge, shall, at the same meeting, certify under their hands to the commissioners of taxes, whose certificate shall be a warrant to the receiver-general to pay the same.

Penalty on inspector or surveyor making a false or vexatious charge or surcharge.

§ 72. And if any inspector or surveyor shall wilfully make any false or vexatious surcharge, or wilfully deliver or cause to be delivered to the commissioners for executing this act any false and vexatious certificate of charge, he shall forfeit to the party aggrieved not exceeding 50*l.*, to be recovered by action in any court of record at *Westminster*, for offences committed in *England*, and

in the court of great sessions, for offences committed in *Wales*, with full costs of suit. 43 G.3. c.161.

§ 72. But nothing hereinbefore contained, nor any suit by the party aggrieved, in pursuance of this act, shall be construed to affect or defeat any action or information brought or to be brought against any surveyor or inspector, in pursuance of stat. 43 *G.* 3. *c.* 99. for any corrupt, vexatious, or illegal practices in the execution of his office: and the judge, before whom such inspector or surveyor shall have been convicted of such offence, by indorsement on the postea, or the court before whom such person shall be convicted, may mitigate the penalty at his discretion.

Not to defeat any action against surveyor, for corrupt, vexatious, or illegal practices.

§ 73. Assessors, inspectors, or surveyors, and appellants, who may be dissatisfied with the determination of the commissioners, may require the commissioners to state specially, and to sign the case upon which the question arose, together with the determination thereupon; which case they, or the major part of them then present, are hereby required to state and sign accordingly, and to cause the same to be delivered to the party making such request as aforesaid, to be by him transmitted to one of the justices of the court of K. B. or C. P., or to one of the barons of the exchequer: and if his opinion shall be in support of any surcharge, the assessment shall be in the double duty, or shall be mitigated as shall have been determined on the appeal. But the instalment on assessments due previously to the opinion of the judge being certified, shall be collected as allowed by commissioners, and levied as if no such case had been transmitted.

Assessors, &c. being dissatisfied with commissioners' determination, may demand a case, for the opinion of a judge. Proceedings thereon.

[But by stat. 45 *G.* 3. *c.* 71. § 3. Upon proof given to the commissioners for the affairs of taxes of payment of any assessment, which shall or ought to be reversed according to the opinions of one of H. M.'s judges, obtained and certified in pursuance of the said act, the said commissioners shall direct the receiver-general to whom the receipt of such monies shall appertain, to repay out of any monies in his hands so much as shall appear to the said commissioners to have been overpaid on such assessment.]

45 G.3. c.71. Tax-office may order receiver-general to repay money over-paid on assessments.

Stat. 43 *G.* 3. *c.* 16. § 74. enacts, That if, according to the opinion of any judge, to whom any case shall, at the request of the appellant, be transmitted in pursuance of this act, the charge or surcharge shall be confirmed, the person so charged or surcharged shall, for the costs attending the same, pay to H. M. 40*s.* in addition to the assessment or surcharge so confirmed, which costs shall be added to such assessment, and levied and collected therewith, and as part of the duties so assessed.

43 G.3. c.161. Appellant having demanded a case for the opinion of the judges, to be subject to costs, if the charge be confirmed.

§ 75. Relates to the sending duplicates to the receiver-general; whenever any case so to be transmitted to any judge for his opinion thereon, in the manner hereby directed, shall have been obtained by any inspector, &c. by reason of any surcharge, or any certificate not being allowed by the commissioners for executing this act, and the same shall not be returned within the time hereby limited for delivering the duplicates to the receiver-general, and the king's remembrancer, whereby the passing of the accounts of the receivers-general may be impeded.

When cases, transmitted to a judge, shall have been obtained by the inspectors or surveyors, and shall not be returned within the time limited for delivering the duplicates, &c.

By stat. 4 *G.* 4. *c.* 11. § 7. Copies of all cases which shall after the passing of this act be stated and signed by any commissioners acting in the execution of the said acts and of this act, at the instance and request of any assessor, inspector,

4 G.4. c.11. Copies of all tax-office cases

4 G.4. c.11.

determined by the judges to be annually laid before parliament.

surveyor, or person appealing under the powers in the said acts contained, and which shall be determined by any one or more of the justices of the courts of K. B. or C. P., or of the barons of the court of exchequer for the time being at *Westminster*, in *England*, *Wales*, or *Berwick-upon-Tweed*, or by any one or more of the lords of the court of sessions, or barons of the court of exchequer in *Scotland*, shall, together with a copy or copies of the said judge or judges' opinion and determination thereto subscribed, duly certified by the solicitors for the affairs of taxes for *England* and *Scotland* respectively, be annually laid before parliament within 21 days after the meeting thereof. (*a*)

Commissioners of assessed taxes were ordered by the Court of Exchequer to state and sign a case for the appellant, for the opinion of a judge under this act. *In re Commissioners of Great Yarmouth, H.* 1 & 2 *G.*4. 9 *Price*, 149.

43 G.3. c.161. Commissioners, on application made to them, to grant relief to persons who have been assessed in different places for the same cause and on the same account.

By stat. 43 *G.* 3. *c.* 161. § 76. If any person assessed under this act in one parish or district to any of the said duties, shall be again assessed in another on the same account, the commissioners for this act within such latter parish or district, or the majority of them present, on any application for the purpose, are hereby required to alter any assessment of such person so assessed twice, on proof thereof given before them of assessment made on the same account in another place, and in what place specifically, and that he hath paid or is liable to pay the duties for the same upon such assessment; which proof shall be made by the oath or affirmation of the party, or some credible witness, that the several assessments are for the same cause and on the same account; and by the production of either a copy or certificate of the first assessment, signed by two or more commissioners of the district for which such first assessment shall have been made, to be verified on oath or affirmation as aforesaid; which copy or certificate the clerk of the said commissioners shall deliver *gratis* to the party requiring the same, or in default of such copy or certificate, then the proof thereof shall be made by other evidence on oath or affirmation, to the satisfaction of the commissioners present, or the majority of them; and if any person shall, by any fraudulent contrivance whatever, procure any assessment to be altered, with intent to his defraud H. M. of the duties, or any part thereof, he shall, for every offence, forfeit 50*l.*

(4.) Provisions for facilitating Payment of the Duties.

Assessments to be in force for one whole year, from the 5th April, and the duties to be paid by quarterly instalments.

By stat. 43 *G.*3. *c.*161. § 23. Every assessment shall be in force from the 5th of *April* in the year in which the same shall be made, and ending on the 5th of *April* then next following, and the several duties shall be paid by quarterly instalments, on the 20th of *June* for the quarter commencing from the 5th of *April* and ending on the 5th of *July*, the 20th of *September* for the quarter commencing from the 5th of *July* and ending on the 10th of *October*, and the 20th of *December* for the quarter commencing from the 10th of *October* and ending on the 5th of *January*, and the 20th of *March*, for the

(*a*) See the first return under this act, ordered by the House of Commons to be printed 23d *Feb.* 1824.

quarter commencing on the 5th of *January* and ending on the 5th of *April* in every year: and any two or more commissioners shall, as soon as the assessment shall be made, issue out and deliver to the collectors their warrants for the levying and collecting the said duties as the same shall become payable, by such quarterly instalments; and such part as cannot be so levied and collected, may be recoverable as a debt upon record to the king, with full costs; and when so recovered, the duties shall be paid to the receiver-general, in aid of the parish or place answerable for the same.

43 G.3. c.161. Commissioners to issue warrants to collectors, levying the duties.

Arrears, which cannot be so levied, to be recoverable, as debt upon record.

§ 51. If any persons assessed to any of the duties hereby made payable, shall remove out of the limits of the collectors who shall be charged to collect the same, without first discharging all the duties charged upon them which shall then be due, and without leaving within such limits sufficient goods whereon the duties in arrear may be raised and levied, they shall, for every offence, forfeit 20*l.* over and above the duties so left unpaid.

Penalty on persons removing without payment of duties.

§ 53. And if any persons who ought to be charged by virtue of this act shall, by changing their place of residence, or by any other fraud, escape from taxation, and not be charged, and the same be proved before any two commissioners, where such persons reside at any time within one year next after such charge ought to have been made, he shall be charged (on proof thereof) treble the value of so much as he ought to have been charged at by this act, the said treble value to be charged in the assessment on such persons, and on non-payment thereof, to be levied on their goods, lands, and hereditaments.

Persons, who fraudulently escape taxation, may be charged treble the duties at any time within one year after the charge ought to have been made.

§ 54. And where any persons chargeable with the duties hereby made payable, shall be under the age of 21 years, or where any person so chargeable shall die, the parents and guardians of such infants, upon default of payment by them, and the executors and administrators of the persons so dying, shall be liable to and charged with the payments which the said infants ought to have made, and the persons so dying were chargeable with; and if such parents or guardians, or such executors or administrators, shall neglect or refuse to pay, they may be proceeded against in like manner as any other persons making default of payment; and all parents and guardians, so making payment, shall be allowed all sums paid for such infants, in their accounts; and all executors and administrators shall be allowed to deduct such payments out of the assets and effects of the person so dying.

Parents and guardians to pay the duties charged upon infants and executors and administrators the assessments upon persons deceased.

§ 55. And where in the assessment of any parish or place, by virtue of the rules contained in schedules (A) or (B) the said duties shall be charged on the landlords or owners of any dwelling-houses let in different apartments, tenements, lodgings, or lands, and not on the respective occupiers thereof, and the landlord or owner shall not reside there, or shall not have sufficient goods or chattels therein, whereon the duties so assessed may be levied, and such landlords or owners shall not have paid the duties, in such case the collectors may demand the same from the tenants or occupiers, and on non-payment thereof, may levy the said duties on the goods and chattels of such tenants and occupiers respectively, by distress and sale, as if charged on such tenants and occupiers; who shall pay such sums so assessed, and deduct out of their rent, such payments as the landlords and

Duties charged on landlords, under schedules (A) and (B) may in certain cases be demanded of the occupier of the premises, who may deduct the amount out of landlord's rent.

43 G.3. c.161. owners have been charged with; and the said landlords and owners, both mediate and immediate, according to their respective interests, are hereby required to allow such payments on receipt of the residue of the rent, and every such tenant and occupier shall be acquitted and discharged of so much money as the said assessments shall amount unto, as if the same had actually been paid unto such landlords or owners.

Parishes or places, in which assessments are made, to be answerable for the duties.

§ 56. And the ward, parish, or place in which any assessment shall be made, shall be answerable for the amount of the duties charged therein, and for the said duties being duly demanded of the respective persons charged therewith, within 10 days after the same are payable by virtue hereof, by the collectors of such ward, &c. and also for such collectors, their executors, or administrators, duly paying the sums received by such collectors to the receiver-general of the said duties, according to this act and stat. 43 *G.* 3. *c.* 99.; and every arrear of the said duties arising from the default as aforesaid, or by the failure of any collector for which any ward or place shall be answerable, shall be re-assessed upon the same, as soon after such default shall be discovered as conveniently can be done, and shall respectively be charged on the amount of the assessment, which shall be made for the same duties in the year commencing from the 5th of *April* preceding the time of making such re-assessment, by duly apportioning the amount of such arrear amongst the several persons assessed in that year to the same duties respectively on which such arrear shall have accrued, according to each person's assessment thereof, as nearly as the case will admit, and by the like rules, by which the original assessment was made of the same duties, in such manner as any assessment may hereby be raised and levied.

Arrears to be re-assessed.

Persons not to be assessed to poor's rate or highway duty, for any duties hereby made payable.

Payment of duties no title to settlement.

§ 58, 59. And no person shall be assessed to the poor's rate or highway for or in respect of any duties hereby made payable; but the owners and occupiers shall continue rateable to those rates and duties. Nor shall payment of the duties hereby imposed, entitle the party paying them, in any parish, to a settlement in such parish or place.

(5.) General Regulations relative to the Execution of the Act; and see the regulating Acts, *post, sect.* IV. *this Title.*

Inspectors, &c. under stat. 43 G.3. c.99. to act under this act.

By stat. 43 *G.* 3. *c.* 161. § 9. The several inspectors or surveyors, authorised under stat. 43 *G.* 3. *c.* 99. shall have the survey and inspection of the duties hereby made payable, and shall take accounts of the several dwelling-houses, &c. &c., and of the duties chargeable in respect thereof, and shall examine and inspect the assessments or certificates thereof made, and execute all things belonging to the same, according to the powers vested in them hereby and by stat. 43 *G.* 3. *c.* 99. respectively.

No inspector to act as a commissioner.

But no inspector, now or hereafter to be appointed, shall act as a commissioner in any thing concerning this act. *Ibid.*

Commissioners, &c. may inspect parish books,

§ 16. And any two or more commissioners, or any one or more surveyors, inspectors, and assessors, or any persons authorised by any of them, may at all seasonable times inspect or take copies or

extracts from any books kept by any parish officers or other persons concerning the poor-rates, or any other public taxes, rates, or assessments in any place within the limits for which they shall be appointed. And if any person, in whose custody or power any such book shall be, shall refuse to permit such inspection, or such copies or extracts to be made, or to attend the commissioners with their books when required, the offender shall forfeit not exceeding 10*l*. for every offence.

43 G. 3. c. 161.

and take copies thereof.

§ 78. Out of the monies arising from the duties, the commissioners of the treasury, or the high treasurer for the time being, may appoint salaries and allowances for the surveyors, inspectors, and other officers employed in executing this act, and may discharge such incidental charges and expences as shall necessarily attend the execution hereof, as they shall respectively think reasonable.

Commissioners of the treasury to appoint salaries to officers, and to pay incidental expences.

§ 79. Every collector shall have three-pence in the pound, for what money he shall pay the receiver-general, his deputy or deputies, within the time limited by stat. 43 *G*. 3. *c*. 99.; and the clerk of the respective commissioners, who shall perform his duties within the times limited by this act, shall, by warrant under the hands of two or more commissioners, receive from the respective receivers-general, their deputy or deputies, 1½*d*. in the pound, of all such monies as he or they shall have received by virtue of such warrants or certificates, provided this act be carried into execution in due time, and in an effectual manner, for the district in which he shall be appointed clerk, and all warrants or estreats be made out, and the duplicates delivered to the receiver-general, and to the king's remembrancer, within the times limited by this act, and not otherwise; and no other person except the person appointed to be his assistant, shall receive any part of the reward hereby given to such clerk; the amount whereof shall be apportioned and settled by the respective commissioners; nor shall any clerk or assistant, under any pretence whatever, demand or receive any gratuity for any thing to be done by him, by virtue of this act, from any person except the receiver-general, his deputy or deputies.

Allowances to the receivers-general, collectors and clerks to commissioners.

No person to receive any part of the clerk's poundage, except himself or his assistant.

Clerk not to take any fee or gratuity.

§ 81. And the collectors shall pay quarterly unto the respective receivers-general, or their respective deputies, within 20 days after the days appointed for the payment thereof, at such places as shall be appointed by such receivers-general, according to stat. 43 *G*. 3. *c*. 99.

Payment of duties by the collectors to the receivers-general, into the exchequer.

§ 86. Any action brought against any person for any thing done in pursuance hereof, or of any act for granting duties to be assessed under the regulations of this act, shall be commenced within six calendar months next after the fact committed: and no writ or process shall be sued out for the commencement of such action, until one calendar month next after notice in writing shall have been delivered to, or left at the usual place of abode of such person by the attorney for the intended plaintiffs; in which notice shall be explicitly contained the cause of action, the name and place of abode of the intended plaintiffs, and of his and their attorney; and no evidence shall be given on the trial of such action or suit of any cause of action, than such as is contained in such notice; and the intended defendants to whom such notice shall have been delivered, may, at any time before the expiration of such calendar month, tender amends to the intended plaintiffs, his

Limitation of actions.

Tender.

43 G. 3. c. 161. or their attorney; and in case such amends are not accepted, may plead such tender in bar to any action to be brought against them, grounded on such notice; and the defendants in every such action, may plead the general issue, and also such tender, and any other plea, with leave of the court, in bar of such action; and may give this act and the special matter in evidence at any trial to be had thereupon; and if the jury shall find for the defendant in any such action, or if the plaintiffs shall be nonsuited or discontinue their action, after the defendant or defendants shall have appeared; and if, upon demurrer, judgment shall be given against the plaintiffs, the defendants shall have treble costs, and have the like remedy for the same as any defendant hath in any other case to recover costs by law.

General issue.

Treble costs.

Expences of actions, brought by or against commissioners or collectors, to be defrayed by an assessment on the parish.

§ 86. And every action which shall be brought against any collectors appointed under this act, shall be defended by the commissioners acting for the division or place where such collector shall have been appointed;—and the costs attending the same, as also every other action to be brought by or against commissioners or collectors in pursuance hereof, or for any thing done in pursuance of this act, or any act, for granting duties to be assessed under the regulations hereof, shall be defrayed by an assessment made on the parish or place for which such collector or collectors shall have been appointed, in a just proportion to the amount of the duties payable under this act, on the respeetive persons charged to the same in the assessment to be made next after the time when the said costs and charges shall have been incurred.

Recovery of penalties.

§ 80. All pecuniary penalties and forfeitures hereby imposed may be sued for and recovered and applied in the manner and form directed by stat. 43 *G.* 3. *c.* 99. in regard to the pecuniary penalties thereby imposed.

(6.) Allowances in respect of Children.

56 G. 3. c. 66.

By stat. 56 *G.* 3. *c.* 66. § 11. stats. 46 *G.* 3. *c.* 84. and 52 *G.* 3. *c.* 84. granting certain allowances out of the duties in respect of children are repealed.

(7.) Duties; and herein of those imposed.

(A) On Windows.
(B) On Houses.
(C) On Servants.
(D) On Carriages.
(E) On Horses.
(F) On Horses, &c. not charged under Schedule (E) and on Mules.
(G) On Dogs.
(H) On Horse Dealers.
(I) On Hair Powder.
(K) On Armorial Bearings.
(L) Game Licences.
(M) Exemptions.
(N) Forms of Certificates.

Note.—As by stat. 48 *G.* 3. *c.* 55. the duties thereby imposed are collected under and subject to the regulations of the former acts (as before-mentioned,) those parts of the several schedules of stat. 43 *G.* 3. *c.* 161. which contain provisions for the carrying those schedules into execution are retained here, and will be found at the conclusion of the corresponding schedules of stat. 48 *G.* 3. *c.* 55. 48 G.3. c.55.

Note also.—That the *brackets* express that the parts included within them are not contained in stat. 52 *G.* 3. *c.* 93., but the parts not within the brackets, and those which are in italics are in that act. 52 G.3. c.93.

Schedule (A), 48 G. 3. *c.* 55.

NUMBER OF WINDOWS According to which the Dwelling-Houses and Offices undermentioned shall be charged.	Duties to be charged for Windows in every Dwelling-House and Offices in England, Wales, and Berwick-upon-Tweed.		
	£.	s.	d.
Not more than 6 windows or lights, except in such houses which shall be worth the rent of 5*l.* by the year, and shall be charged to the duty mentioned in schedule (B), according to the rent thereof	0	6	6
Not more than 6 windows or lights, if of the value before mentioned, and charged to the said duty accordingly	0	8	0
7 windows or lights	1	0	0
8 - - Do.	1	13	0
9 - - Do.	2	2	0
10 - - Do.	2	16	0
11 - - Do.	3	12	6
12 - - Do.	4	9	6
13 - - Do.	5	6	6
14 - - Do.	6	3	6
15 - - Do.	7	0	0
16 - - Do.	7	17	0
17 - - Do.	8	14	0
18 - - Do.	9	10	6
19 - - Do.	10	7	6
20 - - Do.	11	4	6
21 - - Do.	12	1	0
22 - - Do.	12	18	0
23 - - Do.	13	15	0
24 - - Do.	14	11	6
25 - - Do.	15	8	6
26 - - Do.	16	5	6
27 - - Do.	17	2	0

NUMBER OF WINDOWS According to which the Dwelling-House and Offices under-mentioned shall be charged.	Duties to be charged for Windows in every Dwelling-House and Offices in England, Wales, and Berwick-upon-Tweed. £.	s.	d.
28 - - Do.	17	19	0
29 - - Do.	18	16	0
30 - - Do.	19	12	6
31 - - Do.	20	9	6
32 - - Do.	21	6	6
33 - - Do.	22	3	0
34 - - Do.	23	0	0
35 - - Do.	23	16	6
36 - - Do.	24	13	6
37 - - Do.	25	10	6
38 - - Do.	26	7	0
39 - - Do.	27	4	0
40 to 44 Do.	28	17	6
45 - 49 Do.	31	13	6
50 - 54 Do.	34	10	0
55 - 59 Do.	37	6	0
60 - 64 Do.	39	15	6
65 - 69 Do.	42	0	6
70 - 74 Do.	44	5	0
75 - 79 Do.	46	10	0
80 - 84 Do.	48	15	0
85 - 89 Do.	51	0	0
90 - 94 Do.	53	4	6
95 - 99 Do.	55	9	6
100 - 109 Do.	58	17	0
110 - 119 Do.	63	6	6
120 - 129 Do.	67	16	6
130 - 139 Do.	72	6	0
140 - 149 Do.	76	16	0
150 - 159 Do.	81	5	6
160 - 169 Do.	85	15	6
170 - 179 Do.	90	5	0
180 and upwards Do.	93	2	6
And for every such dwelling-house which shall contain more than 180 windows or lights, for every window or light exceeding the number of 180	0	3	0

4 G.4. c.11. One moiety of the duties on windows, shall cease.

By stat. 4 *G.* 4. *c.* 11. § 2. It is enacted that from and after the 5th of *April* 1823, in *England*, *Wales*, and *Berwick upon Tweed*; on all assessments to be made for any year commencing from the day aforesaid, one moiety and equal half part of each and every of the duties on windows or light, shall respectively cease and determine, and be no longer paid or payable: provided nevertheless,

that the duties hereby reduced, and to be hereafter assessed, shall not include any fraction of one penny.

Reduced duties shall not include any fraction of one penny.

Rules by Stat. 48 *G.* 3. *c.* 55.

48 G. 3. c. 55. Rules for charging.

I. — The said several duties to be charged annually in respect of the windows or lights in every dwelling-house, with the household and other offices herein enumerated.

II. — All skylights, and all windows or lights however constructed, in staircases, garrets, cellars, passages and all other parts of dwelling-houses, to what use or purpose soever applied, and whether such windows or lights shall be in the exterior or interior parts of such dwelling-houses, to be charged to the said duties.

III. — Every window or light in any kitchen, cellar, scullery, buttery, pantry, larder, wash-house, laundry, bake-house, brewhouse, and lodging room, belonging to or occupied with any dwelling-house, whether the same shall be within or contiguous to or disjoined from the body of such dwelling-house, shall be charged to the said duties.

IV. — The said duties to be charged yearly upon the occupier or occupiers of the houses, cottages, or tenements, in respect whereof the said duties shall be charged, and to be in force for one whole year, from the 5th day of *April* in the year in which the same shall be charged, to be levied on them, or on their respective executors or administrators except as hereinafter provided.

V. — Where any change in the occupation of any house, cottage, or tenement, shall take place after the assessment shall be made, then the said duties shall be levied upon and paid by the occupier, landlord, or owner for the time being, or on both or all of them, according to their times or possession thereof, without any new assessment, notwithstanding such change in the occupation for the year that such house shall have been assessed: provided, that where a tenant shall quit the same, on the determination of the lease or demise after an assessment made, and shall have given notice thereof to the assessor, the duty shall be discharged by the commissioners for this act for the remainder of that year, in case it shall appear to them at the end of such year, that such house, &c. shall have continued wholly unoccupied during the remainder of such year.

VI. — Where any dwelling-house is or shall be let in different apartments, tenements, lodgings or landings, and shall be inhabited by two or more persons or families, the same shall nevertheless be charged as if inhabited by one person or family only, and the landlord or owner shall be deemed and taken to be the occupier, and shall be charged with the said duties: Provided, that where the landlord shall not reside within the limits of the collector, or the same shall remain unpaid by him for twenty days after the same is due, the duties so charged may be levied on the occupier or occupiers respectively, and such payment shall be deducted and allowed out of the next payment on account of rent.

VII. — Every house whereof the keeping is left to the charge of any person or servant, shall be subject to the like duties as if

48 G. 3. c. 55. Rules for charging.

it were inhabited by the owner or by a tenant; and, if such person or servant shall not pay rates to the church and poor, the said duties shall be paid by the respective owners or tenants of the said house.

VIII. — Every distinct chamber or apartment in any of the inns of court, or of chancery, or in any college or hall in either of the universities of Oxford or Cambridge, or any public hospital, being severally occupied, shall be subject to the same duties as if an entire house, which shall be paid by the respective occupiers; provided, that every such chamber or apartment, which shall not contain more than seven windows or lights, shall be charged at the rate of three shilings and sixpence for every such window or light.

IX. — All dwelling-rooms in any hall or office whatever, belonging to any person, or to any bodies politic or corporate, or to any company, lawfully charged with the payment of any other taxes or parish rates, shall be subject to those hereby payable, and be respectively charged as dwelling-houses; and the person, &c. to whom the same shall belong, shall be charged as the occupier or occupiers thereof.

X. — When a partition or division between two or more windows or lights, fixed in one frame, is of the breadth or space of twelve inches, the window or light on each side of such partition or division shall be charged as a distinct window or light.

XI. — Every window extending so far as to give light into more rooms, landings, or stories than one, shall be reckoned and charged as so many separate windows as there are rooms, landings, or stories enlightened thereby.

XII. — Every window or light, including the frame, partitions, and divisions thereof, which by due admeasurement of the whole space on the aperture of the wall of the house or building, on the outside of such window or light, shall exceed in height twelve feet, or in breadth four feet nine inches, not being less than three feet six inches in height, shall be reckoned and charged as two windows or lights, except such windows or lights as shall have been made of greater dimensions at any time prior to *April 5*, 1785; except also the windows or lights in such parts of dwelling-houses as are used for shops, workshops, and warehouses, and except the windows or lights in the public room of any house licensed to sell wine, ale, or other liquors by retail, which shall be used for the entertainment of guests; and the windows or lights in farm houses especially exempted from the duties in the following schedule marked (B) or in any dwelling-house not chargeable to the duties mentioned in the said schedule.

XIII. — Where any dwelling house shall be divided into different tenements, being distinct properties, every such tenement shall be subject to the same duties as if the same were an entire house, which duties shall be paid by the respective occupiers; provided that every such tenement which shall not contain more than seven windows or lights, shall be charged at the rate of three shillings and sixpence for every such window or light; and every such tenement in *Scotland*, which shall not contain more than seven windows or lights, shall be charged at the rate of three shillings for every such window or light.

Exemptions by Stat. 48 G. 3. c. 55.

Case I. — Any house belonging to H. M., or any of the royal family, and every public office, for which the duties heretofore payable have been paid by H. M. or out of the public revenue. 48 G.3. c.55. Exemptions.

Case II. — Any hospital, charity school, or house provided for the reception and relief of poor persons, except such apartments therein as are or may be occupied by the officers or servants thereof, which shall severally be assessed, and be subject to the said duties as entire dwelling-houses.

Case III. — The windows in any room of a dwelling-house, licensed according to law as a chapel for the purposes of divine worship, and used for no other purpose whatsoever.

Provided that every such hospital, charity school, house for the reception and relief of poor persons, or room licensed as a chapel as aforesaid, shall be brought into charge by the assessor or assessors, or in their default, by the surveyor or inspector, and shall be stated on the certificate of assessment as such; and on due proof of the fact before the commissioners by the assessors, it shall be lawful for the commissioners for executing the said act to discharge such hospital, &c. from the said duties, or such part thereof as is hereby intended to be exempted, in like manner as they are authorised to discharge the assessment on poor persons by this act, but not otherwise.

Case IV. — The windows or lights, in any dairy or cheese room belonging to and occupied with any dwelling-house, chargeable with the said duties, although the same shall be part thereof, which shall be used by the occupiers for the purpose of keeping butter or cheese, being their own produce, for sale or private use; provided that the windows or lights in such dairies or cheese rooms shall be made with splines or wooden laths, or iron bars, or wires, and wholly without glass, and that the occupiers of the dwelling-houses to which such dairies and cheese rooms belong, shall cause to be painted on the outer door thereof, or on the outside of the windows thereof, or one of them, in large Roman letters, the words "dairy or cheese room," as the case may require, and shall keep such words so painted distinctly legible, during all such time as such exemption shall be claimed; and provided that such dairies or cheese rooms shall not be ever used to dwell or to sleep in by any person, but shall be wholly kept for the several purposes hereinbefore mentioned: and provided also, that an assessment of all such windows or lights shall be duly made, and the fact be truly returned in the manner directed by this act, in other cases of exemption from the said duties, so that the number of windows so to be exempted may be ascertained, and the exemption be allowed by the commissioners for executing this act.

By stat. 57 *G*. 3. *c*.25. § 5. after reciting that by stat. 48 *G*.3. *c*.55. certain windows or lights in the room of any dwelling-house, used as a dairy or cheese room are exempted from duties, provided that the said windows or lights shall be made with splines or wooden laths, or iron bars or wires, and wholly without glass: and whereas it is expedient to exempt from the said duties on windows or lights one window or light in any dwelling-house 57 G.3. c.25. Exemptions for one glazed window in a dairy in a farm house.

57 G.3. c.25. being a farm house, occupied by a tenant, and *bona fide* used for the purposes of husbandry only, in manner hereinafter mentioned; it is enacted, that from the 5th of *April*, 1817, one window or light in any dairy or cheese room or room used as a dairy and cheese room in any farm house before described, which shall be used by the tenant of such farm house for the purpose of keeping butter or cheese, or both, being the actual produce of such farm, for sale or private use, although the said window or light be made with glass, shall be exempted from the said duty under the same terms and conditions as windows or lights made with splines or wooden laths, or iron bars or wires, and without glass, are by the said act exempted from the same duty; provided that the regulations of this act respecting warehouses and other places used for the purposes of trade, in order to obtain the exemptions granted by this act, and the powers vested in the surveyors of entering, viewing, and examining the same, shall be duly observed, practised, and applied in regard to windows or lights in dairies and cheese rooms, as fully and effectually as if the same regulations and powers were respectively repeated and expressly applied to the said last-mentioned windows or lights.

Repeal of Duties on Windows in Shops, &c.

4 G.4. c.11. By stat. 4 *G*. 4. *c*. 11. § 1. after reciting that whereas certain duties were granted to H. M. upon houses, windows and lights, as set forth in the schedule marked (A) to stat. 48 *G*. 3. *c*. 55., and that it is expedient finally to determine certain of the said duties on windows, or lights, now payable in respect of *shops*, or *warehouses being part of dwelling-houses* occupied by persons in trade, it is enacted, that from and after the 5th of *April* 1823, in that part of *G. B.* called *England, Wales*, and the town of *Berwick-upon-Tweed*, for and in respect of and upon all assessments to be made for any year commencing from the day and year last aforesaid, so much of the duties on windows and lights in shops or warehouses, being parts of dwelling-houses in respect of any number not exceeding three such windows or lights in any shop or warehouse in the front or fronts, and on the ground or basement story of every dwelling-house occupied by any person in trade, who shall expose to sale or sell any goods, wares, or merchandizes in any such shop or warehouse, therein before described, and all assessments thereon for any year commencing from and after the day aforesaid, shall severally cease and determine.

From April 5 1823, duties on windows in shops or warehouses, in dwelling-houses, repealed.

§ 8. After reciting that whereas by the said act of 48 *G*. 3. *c*. 55., under the said schedule thereto marked (A), there is charged for the windows in every dwelling-house in *England* and *Wales* and *Berwick-upon-Tweed*, having not more than six windows or lights therein, a duty of six shillings and sixpence, and for every such dwelling-house in *Scotland* a like duty of four shillings and sixpence (such houses respectively not being worth the rent of five pounds by the year,) and which duties are reduced by the provisions of this act; and it is expedient to exempt the occupiers of such houses in certain cases from the said reduced duties; be it further enacted, that upon any assessment of the said duties to be made upon the occupier of any such dwelling-house, for any year

Exemption from the reduced duties on houses with less than six windows, and not worth 5*l*. a year, to occupiers having three children born in wedlock.

commencing from or after 5th of *April* 1823, it shall be lawful for the respective commissioners acting in the execution of the said acts and of this act, in their respective districts, to grant relief to any such occupier having three children born in lawful wedlock, and wholly maintained by him or her, and at his or her expence, and to strike out the charge on any such occupier on the proof by the rules and in the manner authorised and required by the said recited acts in cases of exemption from the said duties by reason of poverty. 4 G. 4. c. 11.

Provisions by Stat. 43 G. 3. c. 161. respecting the Exemptions of Windows from Assessment.

By stat. 43 *G.* 3. *c.* 161. § 18. And no window or light shall be exempted from the duties hereby made payable, by reason of its having been stopped up, unless such window or light shall be stopped up effectually with stone or brick, or with the same kind of materials whereof that part of the outside walls of such dwelling-house, in which such window or light shall have been, doth chiefly consist.

43 G. 3. c. 161. Windows to be stopped up with the same materials as the outside of the house.

§ 19. But nothing herein contained shall charge any window or light in the roof of any dwelling-house which shall be stopped up on the outside thereof effectually with materials of the like nature of which the outside of the roof shall chiefly consist, nor any window or light which shall have been stopped up before the commencement of this act, according to the direction of the laws in force at the time of passing this act.

Windows in the roofs stopped up with the same materials as the roof, and windows stopped before the commencement of this act.

§ 20. And no window or light shall be newly opened or made in any dwelling-house or office belonging thereto; nor shall any, stopped up at the time when the assessment in respect of such dwelling-house shall be made for the then current year, be restored; nor shall any which has been charged in that year be stopped up, without in each of the cases, six days' previous notice thereof in writing being given by the occupier, to the surveyor or inspector for the place, describing therein the particular situation of every such window or light in such dwelling-house; and the number of such windows or lights if more than one, so to be made &c., on pain, in case of neglecting to give such notice, of forfeiting 10*l.* for every window or light so newly made, &c.; which penalty shall be paid over and above any duty payable in respect of such dwelling-house.

Windows not to be made, restored, or stopped up, without six days' previous notice being given to the surveyors, under a penalty of 10*l.*

§ 21. And in case any surveyor or inspector herein mentioned shall receive any notice, or shall otherwise discover that any window or light in any dwelling-house, liable to the said duties, hath been newly made or restored as aforesaid, which window or light hath not been charged in the assessment for that year, then such surveyor or inspector shall certify the same in writing under his hand, by way of charge, to any two or more commissioners for executing this act; and shall state in such certificate to what amount the persons liable to the said duties have been under-rated in the assessment for that year; and thereupon, any two or more of the said commissioners shall cause such assessment to be amended, according to such certificate, and the duties to be charged shall be levied thereon, from the commencement of the year in which such window or light shall be made or restored, as if such window or light had been originally included in such as-

Surveyors to charge windows newly made, or restored, and omitted in the assessment.

43 G. 3. c. 161. Penalty on stopping up windows to elude payment.

sessment: but if the commissioners shall be of opinion that any window or light so restored in any dwelling-house, shall have been stopped up at the time when the assessment was made, with intent to evade the payment of the said duties, they shall charge the occupier thereof at the rate of double the sum by which the assessment shall be increased by reason of such certificate: provided, that every such assessment, when amended, shall be liable to be appealed against in such manner as if the same had been originally so made.

No abatement to be allowed for windows stopped up after the commencement of the year of assessment.

§ 22. And no assessment shall be subject to appeal, nor any abatement of the duties allowed in any year, by reason of any windows or lights being stopped up, unless it shall be proved, to the satisfaction of the commissioners for executing this act, that the same windows or lights were respectively stopped up according to the directions of this act, previous to the commencement of the year on which the said assessment shall or ought to have been made.

48 G. 3. c. 55.

Schedule (B) Stat. 48 *G.* 3. *c.* 55. Duties on inhabited Dwelling-Houses.

	Value in the Pound. £.	s.	d.
For every such inhabited house which, with the household and other offices, yards, and gardens, therewith occupied and charged, are or shall be worth the rent hereinafter mentioned by the year, there shall be charged the yearly sums following; *videlicet,*			
5*l.* and under 20*l.* rent, by the year - - -	0	1	6
20*l.* and under 40*l.* rent, by the year - - -	0	2	3
40*l.* rent by the year, and upwards - - -	0	2	10

Rules.

I. — The said last-mentioned duties to be charged annually on the occupier for the time being of every such dwelling-house, being of the annual rent of five pounds or upwards, at the respective rates before mentioned, and to be levied on him, or on his executors or administrators, and in like manner, in case of a change in the occupation thereof, as is before directed in respect of the duties on windows or lights, and in addition to the duties contained in schedule (A).

II. — Every coachhouse, stable, brewhouse, washhouse, laundry, woodhouse, bakehouse, dairy, and all other offices, and all yards, courts and curtilages, and gardens and pleasure-grounds, belonging to and occupied with any dwelling-house, shall, in charging the said duties, be valued together with such dwelling-house; provided no more than one acre of such gardens and pleasure-grounds shall in any case be so valued.

III. — All shops and warehouses which are attached to the dwelling-house, or have any communication therewith, shall, in charging the said duties, be valued together with the dwelling-house and the household and other offices aforesaid thereunto belonging (except such warehouses and buildings upon or near adjoining to wharfs which are occupied by persons who carry on the business of wharfingers, and who have dwelling-houses upon the

said wharfs for the residence of themselves or servants employed upon the said wharfs). 48 G.3. c.55. Rules for charging.

And also except such warehouses as are distinct and separate buildings, and not parts or parcels of such dwelling-houses, or the shops attached thereto, but employed solely for the purpose of lodging goods, wares, and merchandise, or for carrying on some manufacture (notwithstanding the same may adjoin to or have communication with the dwelling-house or shop).

IV. — Every chamber or apartment in any of the inns of court, or of chancery, or in any college or hall in any of the universities of *G. B.*, being severally occupied, shall be charged thereto as an entire house, and on the respective occupiers thereof.

V. — Every hall or office whatever belonging to any person or to any body politic or corporate, or to any company, lawfully charged with the payment of any other taxes or parish rates, shall be subject to the duties as inhabited houses; and the person, &c. to whom the same shall belong, shall be charged as occupier.

VI. — Where any house shall be let in different stories, tenements, lodging, or landings, and shall be inhabited by two or more persons or families, the same shall nevertheless be charged to the said duties as if inhabited by one person or family only, and the landlord or owner shall be deemed the occupier, and shall be charged to the said duties: provided, that where the landlord shall not reside within the limits of the collector, or the same shall remain unpaid by such landlord for the space of twenty days after the same is due, the duties so charged may be levied on the occupier or occupiers respectively; and such payment shall be deducted and allowed out of the next payment on account of rent.

VII. — No dwelling-house, or other such premises as aforesaid, shall be estimated or rated at any less annual value than the rent or value at which the same premises stand charged in the last rate made on or before the time of making the assessment for the relief of the poor in the same parish or place.

VIII. — In case the said poor rate shall have been made throughout by a pound rate on the full annual value of all the dwelling-houses in the same parish or place, then such assessment shall be made according to the said rate; and the assessors for the said duties shall, in making their assessments on different dwelling-houses in the same parish or place, in all such cases as aforesaid, observe the same rule of proportion between the assessment of the duties granted by this act thereon, as shall have been observed in making such poor rate as to all the premises aforesaid rated in such poor rate.

IX. — In case the said poor rate shall have been made on any proportionate part of such value, then such assessors shall assess the same at the same sums respectively as they would have been assessed at by virtue of this act, if the same had been respectively estimated in such poor rate at the full value thereof respectively.

X. — In case the poor rate in any parish or place shall not be made on the full annual value, nor according to any proportionate part of such annual value, but nevertheless the said dwelling-houses shall be rated in a due proportion to each other, it shall

48 G. 3. c. 55. Rules for charging. be lawful for the assessors, to the best of their information and judgment, to ascertain the actual rent of the several houses, and other the premises aforesaid, in different occupations within their limits, which shall have been let within the period of three years preceding the time for making the assessment, or so many of them as they shall be able to ascertain the rent of; and shall make an assessment on the actual rent on such of the said houses and premises therewith occupied, which shall appear to them to have been so let at the just and full value thereof, and shall afterwards proceed to assess the several other houses with the premises aforesaid occupied therewith in sums respectively bearing the same proportion, as far as the same can be computed, to the amount of such first assessment as the sums charged on the said poor rate on such other premises respectively bear to the sum charged in the said poor rate on the said house and premises so first assessed: provided always, that the aforesaid rule shall extend only to such houses and premises chargeable under this act as shall be rated in such poor rate distinctly and unmixed with other property not chargeable to the duties hereby granted.

XI. — In case any house, with the premises aforesaid therewith occupied, shall not be rated in such poor rate, or shall be rated therein together with other property not chargeable to the duties hereby granted, or there shall be no poor rate where such house is situate, and in every case where the rules before mentioned are not applicable, the said assessors shall make their assessment from the best information they can obtain of the annual value thereof, which in all cases shall be the actual amount of the rent at which the said houses and premises aforesaid respectively are let, or if not let, the rent which they respectively are worth to be let by the year.

XII. — In case any house, with the premises aforesaid, shall, on occasion of the assessor having pursued the proportions observed in the poor rate on which such assessment was made, have been assessed at a sum exceeding the just rate on the annual value, it shall be lawful for the commissioners to abate and deduct from such assessment so much as in their judgment will reduce the same to a just rate on such annual value, but in no case to a less annual value than the same stands rated at in the poor rate.

XIII. — In case any house, with the premises aforesaid, shall, on occasion of the assessor having pursued the proportions observed in such poor rate, have been assessed at a sum less than the actual rent at which the same shall be let, or if not let, at less than the rent at which the same might be let, it shall be lawful for the commissioners to enlarge and increase such assessment to such sum as a like rent would amount unto.

XIV. — Where any dwelling-house shall be divided into different tenements being distinct properties, every such tenement shall be subject to the same duties as an entire house, which duty shall be paid by the occupiers respectively.

Exemptions.

Exemptions. Case I. — Any house belonging to H. M., or any of the royal family, and every public office for which the duties heretofore payable have been paid by H. M., or out of the public revenue.

Case II. — Every dwelling-house, being a farm-house occupied by a tenant, and *bonâ fide* used for the purposes of husbandry only.

48 G. 3. c. 55. Exemptions.

Case III. — Every dwelling-house, being a farm-house, occupied by the owner thereof, and *bonâ fide* used for the purposes of husbandry only, which, together with the household and other offices aforesaid, shall be valued under this act at ten pounds *per annum*, or any less sum.

Case IV. — Any hospital, charity-school, or house provided for the reception or relief of poor persons.

Case V. — Every house whereof the keeping is committed to the care of any person or servant, who doth not pay rates to the church and poor, and who resides therein for the purpose only of taking care thereof: provided that an assessment shall be duly made in every such case, and the fact be truly returned in the manner directed by this act in other cases of exemption from the said duties, and the exemption be allowed by the commissioners for executing this act.

57 G. 3. c. 25. Tenements which have been occupied as dwelling-houses shall not be charged to duties under recited act, when employed solely for the purposes of trade, or as warehouses.

Stat. 57 *G.* 3. *c.* 25. § 1. after reciting stat. 48 *G.* 3. *c.* 55. *Sch.* (B), &c. enacts, that from 5th *April*, 1817, on due proof made in the manner herein directed, to the satisfaction of the commissioners, that any person or any number of persons in partnership together respectively occupy a tenement or building, or part of a tenement or building, which shall have previously been occupied for the purpose of residence wholly, as a house for the purposes of trade only, or as a warehouse for the sole purpose of lodging goods, wares, or merchandise therein, or as a shop or counting-house, no person inhabiting, dwelling, or abiding therein, except in the day-time only, for the purpose of such trade, such person or each of such persons in partnership respectively residing in a separate and distinct dwelling-house, or part of a dwelling-house, charged to the duties under the said act, it shall be lawful for the said commissioners, according to the provisions of this act, to discharge the assessment made for that year in respect of such tenement or building which shall be so used for the purposes of trade, or so employed as a warehouse for the sole purpose of lodging goods, wares, or merchandise therein, or as a shop or counting-house.

Exemptions for tenements used for purposes of trade.

5 G. 4. c. 44. Exemption by stat. 57 G. 3. c. 25. to persons in trade, from the house and window duties, in respect of houses used solely for trade;

By stat. 5 *G.* 4. *c.* 44. § 4. reciting whereas by stat. 57 *G.* 3. *c.* 25. provision is made for granting exemptions to persons in trade from the duties on houses, windows, and lights, and on inhabited houses, in respect of houses, tenements or buildings, or parts of tenements or buildings, used solely by such persons for the purposes of trade, such persons respectively residing in a separate and distinct dwelling-house, or part of a dwelling-house, charged to the said duties, as in the said act described: and whereas it is expedient to extend the said exemptions to the cases herein mentioned; it is enacted, that upon all assessments to be made for any year commencing from and after 5th *April* 1824, the provisions in the said act contained, for granting exemptions from the said duties to persons in trade, in respect of houses, tenements, or buildings in the said act described, shall and may be extended and applied by the respective commissioners and officers acting in the execution of the said act and of this act, on due proof, to all and every person, or any number of persons in partnership together, for and

extends to persons using houses under like circumstances as offices or counting-houses in their professions or other callings.

5 G.4. c.44.
Exemptions.

in respect of any house, tenement, or building, or *part* of a tenement or building, in the said act described, which shall be used by such person or persons as *offices* or *counting houses* for the purposes of exercising or carrying on any profession, vocation, business or calling, by which such person or persons shall seek a livelihood or profit, no person inhabiting, dwelling, or abiding therein, except in the day-time only, for the purpose of such profession, vocation, business or calling, such person or each such persons in partnership respectively residing in a distinct and separate dwelling-house, or part of the dwelling-house charged to the said duties: provided nevertheless, that the exemption herein authorised shall not extend to any chamber or apartment in any of the inns of court or of chancery, or to any college or hall in either of the universities of *Oxford* or *Cambridge*, now chargeable with any of the said duties; and the said exemptions hereby authorized shall be claimed and allowed on due proof, and the assessments thereupon discharged by the same rules, and in like manner and form, as are allowed by the said act to persons in trade; and all and every the provisions in the said act contained shall be observed, followed and practised by the respective commissioners, inspectors, surveyors, assessors, and other persons in the said act described, in granting exemptions and discharging assessments under the provisions of this act, to all intents as if such provisions formed part of stat. 57 *G.* 3. *c.* 25. any thing herein contained to the contrary notwithstanding.

Not to extend to chambers in inns of court, &c.

57 G.3. c.25.
But such tenements may be brought into assessment.

Stat. 57 *G.* 3. *c.* 25. § 2. Provides that all such tenements or buildings, whether employed wholly for the purposes of trade, or as warehouses for the sole purpose of lodging goods, wares, or merchandise therein, or as a shop or counting-house, may be brought into assessment as dwelling-houses in the manner directed by the said act; and every person intending to be relieved from the assessment made in respect of his or her tenement or building used for the purposes of trade, or as a warehouse for the sole purpose of lodging goods, wares, or merchandise therein, or as a shop or counting-house, by virtue of this act, shall in such case give notice thereof to the assessor or surveyor of or for the parish or place where such last-mentioned tenement or building shall be situate, and at the same time deliver a declaration in writing, stating the parish or place where the dwelling-house or dwelling-houses, or part of a dwelling-house used as the residence of him, her, or them, or his, her, or their family or families, are respectively situate; and every assessor or surveyor to whom such notice and declaration shall be delivered, and every surveyor of the district acting for such parish or place, whether he shall have received such notice and declaration or not, who shall have information of such claim being made or to be made, shall upon request, from time to time and at all times in the day-time, be admitted to inspect and survey the tenement or building described to be so employed, as well internally as externally, and shall enquire and examine into the uses and purposes to which the same is or has been employed; and if after any such claim made, or before or after allowance thereof, it shall be discovered that the same tenement or building hath been employed for any other use than for the purposes of trade, or as a warehouse for lodging goods, wares, or merchandise, or as a shop or counting-house, or that any person doth inhabit or dwell

Persons claiming relief to give notice.

Tenements to be inspected.

therein, except as aforesaid, then on due proof thereof before the said commissioners, they shall and are hereby required to assess and charge the said tenement or building as a dwelling-house to the duties granted by the said act, notwithstanding such claim or any thing hereinbefore contained to the contrary: provided always, that nothing hereinbefore contained shall be construed to impeach or affect any exemption from the said duties expressly contained in the said recited act.

57 G. 3. c. 25. Exemptions.

§ 4. Provides that the occupier of any mill or place of manufacture, or warehouse, not being part or parcel of any dwelling-house, nor attached or adjoining to any dwelling-house, nor having any internal communication therewith, may by the licence in writing of the commissioners of the district, signed by them, or any three or more of them assembled at any meeting, after due notice given by the occupier of such mill or place of manufacture, appoint any one of his or her servants named in such licence to watch and guard the said mill, or place of manufacture, or warehouse, in the night-time, and that the abiding of such licensed servant therein, for the purpose of watching and guarding the same, shall not render the occupier thereof liable to any of the duties granted by the said recited act.

Mills or places of manufacture, &c. not attached to a dwelling-house not liable to duty, though a servant licensed to guard the same abide therein.

Provisions by Stat. 43 G. 3. c. 161. respecting the Assessment, and Exemptions of poor Persons from Assessment, for the Duties in the two preceding Schedules.

By stat. 43 *G.* 3. *c.* 161. § 10. Every dwelling-house, cottage, or tenement, of whatever description, occupied at the time of making the assessment, shall be brought into charge in respect of the duties set forth in schedule (A) by the respective assessors, and in their default, by the respective surveyors and inspectors hereinmentioned, according to the number of windows therein, subject to the powers of discharging the same as after mentioned; and every dwelling-house, or tenement, and other premises therewith occupied, and hereby charged, as set forth in schedule (B), being, together, of the annual rent of 5*l.* or upwards, shall also be brought into charge in like manner, according to the full yearly rent at which the same is really and *bonâ fide* worth to be let in respect of the duties set forth in schedule (B); and if any assessor shall omit, in the assessment of the duties in schedule (A), to charge the occupiers of any house or tenement to the same, according to the number of windows therein, or shall omit, in the assessment of the duties set forth in schedule (B), to charge the occupier of any house or tenement, which, with the premises therewith occupied, and hereby charged, shall be of like annual value to the said duties, according to the annual rent at which the same is really and *bonâ fide* worth to be let, whether the occupier thereof shall be entitled to be discharged from the same in manner hereinafter mentioned, or not, such assessor shall, for every neglect, forfeit not exceeding 20*l.* nor less 5*l.*; and where any such dwelling-house, or premises therewith occupied, shall be situate within more parishes or places than one, then the same shall be charged

43 G. 3. c. 161. All houses occupied at the time of making the assessment shall be brought into charge according to the number of windows.

Penalty upon assessor for neglect.

House situate within more parishes than

43 G. 3. c. 161.

to the said several duties as one entire house, and the premises therewith occupied as belonging thereto, in such parish or place, as the surveyor or inspector shall deem most expedient to be notified by the certificate of such surveyor or inspector to the commissioners acting for either of such parishes or places.

one to be charged in either.

Poor persons exempted under certain limitations.

§ 11. Any person inhabiting a dwelling-house containing not more than six windows in the whole, shall be exempted from the duties in schedule (A), in case such person shall be on the books of such parish or place as receiving parochial relief; and shall not be assessed, or liable to be assessed to any of the duties contained in schedules (B), (C), (D), or (E); which several exemptions shall be proved or claimed in the manner hereinafter mentioned.

Exemptions how to be proved.

§ 12. And, in order to relieve such persons who may be charged to the several duties set forth in the schedules (A) and (B), or either of them, it is enacted, that where any such house, cottage or tenement, as is described in the preceding clause, shall be brought into charge, and the occupier thereof shall be entitled to the said exemption by reason of poverty; in every such case, the assessors shall, on the certificate of assessment, set opposite the sum charged on the occupier thereof, the fact of his or her being poor, and shall return the same, together with the assessment and a certificate, as hereinafter mentioned, to the commissioners for executing this act in the district where such assessment shall be made; who, before allowing any such assessment, or making any order thereupon, shall examine the assessors, who shall respectively attend them for that purpose, at such times as they shall appoint, touching the return so made; and if the said commissioners shall, from such examination, and from the certificate hereinafter mentioned, be satisfied that any such occupier is entitled to such exemption, they may, after such proof, strike out the charge, leaving his name, and the number of windows, and rent of such house in the assessment, and every such occupier shall be exempted accordingly; which exemption shall, in the like cases, extend to, and shall be allowed on all assessments on such poor persons, of the duties payable at the time of passing this act, which shall have been, or shall be made, at any time after the commencement of the present year.

Exemptions to be allowed on the assessments for the present year.

§ 13. But before any such shall be allowed, the assessors shall produce to the commissioners a certificate under the hands of five or more substantial householders of such parish or place, in vestry assembled, of whom the resident minister shall be one: but in case there shall be no such minister resident therein, then at least two or more churchwardens and overseers of the poor of such parish or place shall concur with such householders in such certificate, certifying thereby, that they have carefully examined the assessment of the said duties, and the allegations therein made by the assessors, touching such persons who shall be therein stated to be poor, and that, in their judgment and belief, the persons therein certified to be poor, are entitled to be exempted by reason of their poverty, and are wholly unable to pay the duties assessed upon them; provided, that if, in any parish or place, there shall not be five substantial householders, then such certificate may be made by the substantial householders there residing; or if there shall be no churchwardens or overseers, then the same may be granted by the resident minister, or by any

Before exemptions are allowed, the assessors to produce to the commissioners a certificate of the minister and inhabitants of the parish in which the party resides.

two churchwardens or overseers of any adjoining parish or place, who can certify the truth of such allegations, concurring therein with the substantial householders residing in the parish or place where such assessment shall be made. 43 G.3. c.161.

§ 14. And where the occupier of any house, cottage, or tenement, containing more than the number of windows or lights before specified, shall be brought into charge, and the occupier thereof shall, at the commencement of the year for which such assessment is made, be poor and indigent, or shall become so during that year, in every such case, such occupier may give notice thereof in writing, stating the causes to the assessor, or to the surveyor of the district in which such house is situate, annexing thereto a certificate, under the hands of such persons as aforesaid, certifying that, in their judgment and belief, such person is justly entitled to relief on account of poverty for the causes mentioned in such notice; and every assessor shall deliver the notices by him received to such surveyor; and if such surveyor shall be satisfied of the truth thereof, after due examination of the facts and circumstances, and that such person is unable to pay the duties charged on him, and has no probable means of bettering his condition within that year, he is hereby required to certify the same to the commissioners; and if such surveyor shall not be satisfied, then, on notice thereof to such occupier, he may appeal from such charge to the commissioners, giving ten days' previous notice thereof to the said surveyor.

Occupiers of houses containing more than the number of windows before specified may, under certain limitations, be relieved from the duties, provided the surveyor shall certify the truth of the claim, or the same be made out to the satisfaction of the commissioners upon appeal.

§ 14. And in every case where the surveyor shall certify to the said commissioners that he is satisfied of the truth of the claim made by any such occupier, and that he is, and will be unable to pay the duties charged on him within that year; or if, upon appeal, it shall appear to the satisfaction of the major part of the said commissioners present, on the oath of such appellant, or by other lawful evidence on oath produced by such appellant, that he is entitled to maintain such appeal, and wholly unable to pay the duties charged on him, the said commissioners may give such relief, either by striking off the whole of the duty so charged, or diminishing the same, as to them shall seem meet and necessary; and which appeals, for the causes in this clause mentioned, may be heard and determined, either on the days mentioned in this act for hearing appeals in other cases, or at the end of the year, or any days to be appointed by the respective commissioners for executing this act; which exemption shall, in the like cases, extend to, and shall be allowed on all assessments on such poor persons of the duties payable at the time of passing this act, which shall have been, or shall be made at any time after the commencement of the present year.

Exemption in the like cases to be allowed upon the assessments of the present year.

§ 15. Every house or tenement unoccupied at the time of making the assessment shall be inserted as such in the assessment, with the number of windows contained therein, and the annual rent at which the same might be let, if the same shall amount to 5*l.* or upwards; and the assessors, and in their default, the surveyors and inspectors, shall cause the same to be certified to the commissioners, from the time of such house or tenement coming into the occupation of any person, who shall cause notice thereof to be given to such assessor, surveyor or inspector, within 20 days after coming into the occupation, and every person

Unoccupied houses to be inserted in the assessment.

And assessors, &c. to certify when the same become occupied.

43 G.3. c.161. Occupier to give notice and to be charged from the end of the preceding quarter.

neglecting so to do, shall forfeit 5*l*., and shall be liable moreover for such neglect to be charged to the said several duties inserted in the assessment for the whole year, in which such house or tenement became so occupied; but on giving such notice, shall be chargeable only from the time of coming into the occupation thereof, according to the rates in schedules (A) and (B), estimated on the remainder of such year, commencing from the end of the preceding quarter of the year; and every house or tenement charged to the said duties, although the same shall within the year become unoccupied in the manner mentioned in schedule (A), shall be charged to the said duties for the whole year on the former occupier, or the occupier for the time being, as the case may require, unless notice in writing shall have been given to the assessor for the place of such house or tenement becoming unoccupied; and the commissioners for executing this act are hereby empowered, at their discretion, to discharge such assessment, or to direct the duties to be levied according to this act, as to them shall seem just.

Houses becoming unoccupied after assessment, to be charged for the whole year, unless notice is given.

The commissioners executing the several acts relating to the duties of assessed taxes, for districts, are not entitled under the 43 G.3. c.161. § 15. empowering them to discharge assessments *at their discretion*, to discharge persons charged for houses, under § 10., on the ground of not having been occupied during the whole year; unless notice in writing have been given to the assessor of such houses having been unoccupied. And if the commissioners should insert any such allowance in their schedule of discharge, — as in that case the opinion of the judges cannot be taken, because that can only be done on a case of appeal,

In the matter of a parchment schedule of discharge, made by the commissioners executing the several acts relating to the duties of assessed taxes, for the division of Colyton, *in the county of* Devon, *for the year* 1816, *ending 5th* April, 1817, *H.* 60 *G.* 3. & 1 *G.* 4. 8 *Price*, 117. an order had been obtained by the attorney general, calling upon the commissioners to shew cause why they should not be ordered to amend their schedule of discharge, by striking out the sum of 10*l*. 1*s*. 9*d*. (being part of the sum of 13*l*. 18*s*. 7½*d*. inserted therein as discharged from the assessment and not authorized by the powers given to the commissioners by the several statutes, &c.), and to return the same, so amended, to the court of exchequer and cause the said 10*l*. 1*s*. 9*d*. to be collected and levied in discharge of the said assessment. Service on the clerk of the commissioners, ordered to be deemed good service. The affidavit of the surveyor, which was read on applying for the order, stated in effect, that the assessors appointed by the commissioners, duly brought into charge in the assessment for that year, three furnished dwelling-houses, then, and usually used and occupied as lodging-houses by persons and families resorting to *Seaton*, for occasional residence only, similar to furnished houses in other watering places; and that certain persons, owners and proprietors of two of the said dwelling-houses, were charged in the assessment for them, to the amount of 20*l*. 3*s*. 6*d*.; — that no appeal was made, and the assessment being, therefore, in force for the whole year's duty, payable by quarterly instalments, were signed and allowed by two of the commissioners, and delivered to the collectors for collection after all appeals heard and determined; and that the commissioners had transmitted and recorded in this court the parchment duplicate for the division containing the full amount of the said assessment, and including therein the *whole* year's duty charged on the persons assessed respectively, according to the directions of the several acts: — that the collectors collected one moiety of the duties charged by the assessments on the parties, for the first half year, ending at *Michaelmas*, 1816, and paid the same to the receiver-general, and also demanded from them the remaining moieties of the said duties which became due for the second half year, ending on the 5th of *April*, 1817, and they, having refused to pay,

were returned defaulters, under stat. 48 *G.* 3.; — that the collectors having neglected to enforce the remaining half year's duty, although the *said houses were continued and preserved during the whole of the year with the furniture,* but happened to remain unlet during that portion of the year; and thereupon, two of the commissioners, without any appeal by the parties assessed, within the year of assessment, upon their application, caused the last mentioned half year's duty to be inserted in the present parchment schedule of discharge, in the absence of deponent. The affidavit proceeded to state, that the schedule had been transmitted to the receiver-general by the commissioners, or by one of the persons assessed, who acted as their clerk, and by the receiver-general to the office of the commissioners for the affairs of taxes, previous to its being recorded in this court, as required by the statute, and that a copy was transmitted to the deponent; when (having discovered that the sum of 10*l.* 1*s.* 9*d.* now sought to be restored, had been discharged without authority, and contrary to the intent of the acts, and the general practice in other districts, and the opinions of the judges, on cases demanded by surveyors or appellants in cases of appeal as authorized by the statutes) the deponent, in the execution of his office, reported the circumstances to the commissioners for the affairs of taxes, who required the commissioners of the division of *Colyton,* to correct and amend the said schedule (as now required) but that they declined so to do, alleging that they considered themselves authorized *in their discretion,* to make and allow the discharge under § 15. of the act of 43 *G.* 3. *c.* 161., as a house becoming unocupied within the year, in the manner mentioned in schedule A. of the said act: and that they had denied any authority by which they could be required, as they had been, to amend the schedule, no case having been demanded by the surveyor, agreeably to the 73d section of the last mentioned act. The affidavit also stated, that it had been submitted to the commissioners of the division, that the said 15th sect. with reference to schedule A. applies only to discharges, where a house actually becomes unoccupied by a *tenant quitting* on the expiration of his lease or demise, and does not extend to those *cases of owners* of furnished lodging houses of this description; — and that it had also been explained to the *Colyton* commissioners, that the surveyor had no means of demanding a case for the opinion of the judges in the present instance, under the 73d § or otherwise, inasmuch as there had been no determination of the commissioners, on any appeal against the assessment, in which case only authority is given to demand a case under the provisions of the act, — and that the commissioners had refused to rectify the schedule, as required, without the authority of this court. *Clarke* now shewed cause on behalf of the commissioners of *Colyton,* on the affidavit of Mr. *Townsend,* one of the persons assessed, which stated that the dwelling-houses in question were originally purchased by him, the deponent, with part of the furniture in them, together, — that one of them he designed for his occasional residence, and the other to be let by the year, or for a term, and not as lodging-houses; and that one of such houses had *been usually let to a tenant by the year;* — that finding it inconvenient to occupy the one which he had intended for himself, and the tenant of the other house quitting it during the year of the assessment, he advertised both of the

43 G. 3. c. 161.

—the court of Exchequer will order them to amend their schedule by striking it out.

Quære, as to the liability of houses charged to the duties under the circumstances of the present case? *It seems,* houses left unoccupied by the owner, during part of the year, where the furniture is not taken away, are liable to the duties for the whole year.

43 G.3. c.161. houses to be sold, and if not sold, to be let, meaning, for a term of years; — that he was unable to sell or let them, and that they remained altogether unoccupied and unproductive for the period mentioned in the schedule of discharge, and much longer, and that no person during that time resided therein; — and that, upon proof of those facts upon oath before the commissioners of *Colyton*, they (considering themselves duly authorized to do so by virtue of the several acts in that behalf) granted under their hands and seals the schedules of discharge. Upon these facts being stated as cause why the order obtained by the attorney-general should not be discharged, the Court enquired whether the party assessed had given such notice as appeared to be required by the 15th § of the act; and being informed that he had not, they made the order absolute. *

(*a*) The following cases of opinions given on appeal from determinations of the Commissioners, were intended to have been cited in support of the order to amend the schedule; and being of considerable importance, they are here published as connected with the points of the preceding case.

PRICE'S CASE.

The *owner* of a house, occupied by him till the 26th of *June*, is chargeable with the assessed taxes for the remainder of the year, that is, till the succeeding 5th of *April*, although he quitted possession on the 26th of *June*, and ceased to occupy the house afterwards.

The reverend *Richard Price* occupied a house, being his own property, in the tithing of *Port* in the division of *Farringdon*, *Berks*, where he was rated for the same to the assessed taxes on the 26th day of *June*, 1817.* He left the tithing, and went to reside at *Swansea*, and ceased to occupy the house in *Port*, which remained empty the remainder of the year, ending 5th *April*, 1818. He appealed to the commissioners of assessed taxes for the division, [against a charge made on him for the whole year], claiming an abatement for three quarters of a year's house and window duty from the assessment for the year ending the 5th day of *April*, 1818 †, in respect of the house being unoccupied as before mentioned; but the commissioners determined, that, as he was the owner of the house, he could not be relieved from any part of the tax for that year. Not being satisfied with that decision, the commissioners, at his request, stated the foregoing case for the opinion of the subscribing judges, which was as follows:

25th February, 1819.—We are of opinion that the determination of the commissioners is right.

G. Wood. J. A. Park.
J. Bayley. W. D. Best.

Borough of Scarborough, in the County of York. SOLLETT AND GLASS'S CASE.

Houses let as lodgings in places of public resort, and which are so occupied by the various families hiring them for the season (much less than half a year at a time), and are, during the re-

This was an appeal to the commissioners from the surcharge of the surveyor of the windows, and the assessors of the house tax, on each of the above parties, under the circumstances of the following case, stated on an appeal for the opinion of the judges whose names are subjoined.

Within the borough of *Scarborough* aforesaid, there is a place called the *Cliff*, on which several houses (called the *New Buildings*) have been erected and furnished at a very great expence, for the purpose of letting lodgings to the company resorting thither in the summer season, the situation being without the town, and commanding a fine prospect of the harbour, sea, &c. Those houses are large, and generally let to three or four different families at the same time, during the Spa season, which begins about the latter end of *June*, and continues only till the beginning of *October*. *Richard Sollett* and *William Glass* were the owners of two houses, each situate upon the said place called the *Cliff*, in one of which they and

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* The year with relation to the practice of assessing the duties, commences on the 6th of *April*.

† 43 G.3. c.161. —48 G.3. c.55.

§ 17. And where any house, cottage, or tenement, or any windows therein, or any hospital, charity school, poor-house, or licensed chapel ought to be exempted from the said duties by

43 G.3. c.161. Notice to be given by occu-

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their families resided the whole year; but the others were occupied as lodging-houses for the company during the summer, as above mentioned, and were shut up and unoccupied from the end of one Spa season to the beginning of the next, being a period of not less than about eight months, during which time the same were not aired by fires or otherwise, or used in any manner whatsoever by *Sollett* and *Glass*, their families, or servants; and bills were affixed upon their doors, purporting that such houses were to be let ready furnished. The surveyor of the windows made a surcharge upon *Sollett*, of 2*l.* 5*s.* 6*d.*, being the amount of the duty upon the forty-four windows in his said house so let as a lodging-house, from *Michaelmas*, 1783, to *Lady-day*, 1784, the time during which the house was so shut up and unoccupied, as before mentioned; and the assessors of the house tax also charged *Sollett* with the sum of 20*s.* for the duty upon the other house during the same time. The surveyor of the windows likewise made a charge upon *Glass*, of 2*l.* 6*s.* 6*d.* for forty-five windows in his said lodging-house; and the assessors of the house tax charged him 14*s.* 3*d.* for the duty upon the same house for the time last above mentioned, the same being also shut up and unoccupied.

mainder of the year left wholly unoccupied, are chargeable to the assessed taxes for the entire year.

The commissioners, on the hearing of the appeal, assuming that the appellants made as much money of their said lodging-houses in one summer, as the annual rent of their said houses would amount to if let by the year, confirmed the charges of the surveyor and assessors, and stated the above Case, to which the annexed opinion was returned by the subscribing judges: —

Serjeant's Inn, 31*st August*, 1785. — We are of opinion that the determination of the commissioners is right.

H. Gould.
E. Willes.

SKINNER'S CASE.

[Stated for the opinion of the Judges on an appeal from the determination of the Commissioners of assessed taxes.]

At a meeting of the Commissioners for hearing and determining the appeals against the duties on houses, windows, and lights, imposed by an act of the 6th year of his present Majesty's reign, and by another act made in the 24th year of his said Majesty's reign, within the lower part of the south division of the *Lath* of *Aylesford*, in the said county of *Kent*, holden by adjournment at the *Rose* and *Crown Inn*, in *Tunbridge* town, on the 8th *February*, 1787,

Robert Skinner being assessed to the said duties for three dwelling-houses at *Tunbridge Wells*, which he furnished for the purpose of letting as lodging-houses to the company resorting to *Tunbridge Wells* in the summer, which lodgings are usually let about the beginning of *June*, and left between *Michaelmas* and *Christmas*, and not inhabited upon the average, more than six months in the year, although the appellants paid for three quarters of a year to the said duties; and *Edward Strange* and *Thomas Wood* being assessed to the said duties for one dwelling-house each, at *Tunbridge Wells* aforesaid, which they furnish for the same purpose, and which are usually let and left about the same time, appealed against the said duties for the quarter of the year, from the 5th day of *January* last, to the 5th day of *April* next. And it appearing that the said lodging-houses were shut up before the said 5th day of *January* last, the furniture remaining therein, and that the said appellants intend to keep the same shut up until after the said 5th day of *April* next, without opening, for the purpose of airing or letting, or making any use thereof; we, the commissioners present, are of opinion, that the said *Robert Skinner*, *Edward Strange*, and *Thomas Wood*, ought to be abated the assessments to the said duties on the said lodging-houses, for the said one quarter of a year: but Mr. *John Park*, one of the assessors, being dissatisfied with our determination, required us to state the case specially, to be transmitted to the judges for their opinion, which we have done accordingly.

Given under our hands the day and year first above written.

Signed by the Commissioners.

Persons letting houses furnished, as lodging-houses for a part of the year, not being at any time occupied for more than six months successively, and paying three quarters of a year's assessed taxes, are still liable to be charged for the other quarter: and the commissioners have no power to make any abatement in the assess-

43 G.3. c.161.

piers of houses, or managers of hospital, charity-school, &c. entitled to exemption from the duties on such buildings, &c. Exemption to be allowed by commissioners after examination.

virtue of any of the rules in the schedules (A) and (B), the occupier or occupiers, and the persons conducting or managing such hospital, &c. shall give notice thereof to the assessor, which notice shall contain the number of windows in such house, &c. and in such hospital, &c., and respectively distinguishing the number chargeable by this act, and the number claimed to be exempted as aforesaid; and the assessors shall make diligent enquiry into the same, and shall state on the assessment, to the best of their knowledge and belief, the number of windows entitled to such exemption, and shall return such statement, together with the assessment, to the commissioners, who shall examine into such statements, by examination of the assessors in manner before directed in cases of occupiers to be discharged for poverty; and on due proof, the commissioners may discharge such number of windows from assessment as they shall think within the exemptions hereby allowed.

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ment; although during the quarter for which the abatement be claimed, the houses have not been opened.

Serjeant's Inn, 3d *December*, 1787. — We are of opinion that the determination of the commissioners is wrong.

H. Gould. J. Wilson.
J. Heath. A. Thompson.

SUSSEX.

WRIGHT'S CASE.

At a meeting of the Commissioners acting in and for the upper division of the *Rape* of *Chichester*, in the county of *Sussex*, for hearing and determining appeals against the several duties under the management of the commissioners for the affairs of taxes, held the 31st day of *January*, 1807.

A person keeping a house for the purpose of being let as a ready-furnished lodging-house, is chargeable for the whole year's duty, although it be unoccupied and unfurnished for one entire quarter.

Mr. *Wright* appealed against the assessment made on him in the parish of *Southbersted*, in the said county of *Sussex*, for or in respect of the duties on houses and windows, and inhabited houses, for the quarter of the year ending the 5th day of *January*, 1807, on the ground that the house was unoccupied during the whole of such quarter.

The house was unfurnished, and kept for the purpose of being let as a ready-furnished lodging-house, and had been, previously to the 10th of *October* last, let and occupied as such; but it had not been let, and no person had resided therein during the quarter above mentioned, though a person went occasionally into the house to air the same.

The commissioners, on hearing the above appeal, were of opinion that the house ought to be considered as unoccupied during the quarter above mentioned, and not liable to the duty on houses and windows, and inhabited houses, and relieved the appellant accordingly. But the acting surveyor, Mr. *Marsden*, having expressed his dissatisfaction with this determination, and requested that the case might be stated for the opinion of the judges, We, the undersigned, two of the commissioners, have done so accordingly.

Signed by the Commissioners.

15th June, 1808. — We are of opinion that the determination of the commissioners is wrong.

N. Grose. G. Wood.
S. Lawrence. J. Bayley.
S. Le Blanc.

Schedule (C), No. 1. 48 G. 3. c. 55. — Schedule (C), No. 1. 52 G. 3. c. 93. Duties payable annually for male Servants.

NUMBER OF SERVANTS.	Amount of Duty for each Servant			Additional by stat. 52 G. 3. c. 93.		
	£.	s.	d.	£.	s.	d.
For 1 such servant - - - - -	2	4	0	0	4	0
2 - Do. - - - - -	2	16	0	0	6	0
3 - Do. - - - - -	3	7	0	0	9	0
4 - Do. - - - - -	3	18	0	0	9	0
5 - Do. - - - - -	4	9	0	0	9	0
6 - Do. - - - - -	4	14	0	0	9	0
7 - Do.. - - - - -	4	16	0	0	9	0
8 - Do. - - - - -	5	3	0	0	9	0
9 - Do. - - - - -	5	12	0	0	10	0
10 - Do. - - - - -	6	3	0	0	10	0
11 - Do. and upwards, - -	7	1	0	0	12	0
For every such servant retained or employed by any male person never having been married, over and above the before-mentioned duties, the further sum of - - - - - -	1	14	0	0	6	0

Bachelors.

Rules for charging the said last-mentioned Duties.

Rules for charging.

I. — The said last-mentioned duties to be paid by the master or mistress of such servants respectively, and to extend to, and be payable for every male servant retained or employed in any of the following capacities; that is to say, maître d'hôtel, house-steward, master of the horse, groom of the chamber, valet de chambre, butler, under butler, clerk of the kitchen, confectioner, cook, house porter, footman, running footman, coachman, groom, postillion, stable-boy, or helper in the stables of the master or mistress, gardener, park-keeper, game-keeper, huntsman, whipper-in, or by whatever name or names male servants really acting in any of the said capacities shall be called, or whether such male servants shall have been retained or employed in one or more of the said capacities (stat. 52 G. 3. c. 93. *here excepts from its duties cases where other duties are by it imposed on male servants occasionally employed in one or more of the said capacities,*) or in any other business jointly with one or more of the said capacities, and to every such servant let to hire with any carriage or horses for one year, or any longer period; (*and by* stat. 52 G. 3. c. 93. *Sch.* (C), *its duties shall be charged on the greatest number kept by the same person at one time in the preceding year, in any of the capacities before mentioned*).

II. — To all servants of the capacities before-mentioned, employed in taverns, coffee-houses, inns, alehouses, or any other houses licensed to sell wine, ale, or other liquors by retail, and in eating or victualling-houses, and in hotels, or lodging-houses

43 G. 3. c. 55. 52 G. 3. c. 93. (being eating and victualling houses, of whatever description, *these words not in* stat. 52 *G.* 3. *c.* 93.) although not licensed, except hostlers and helpers in stables, (*of such licensed persons,* 52 *G.* 3. *c.* 93.) and drivers employed *by them,* 52 *G.* 3. *c.* 93. to drive, *their* carriages *with horses* let out to hire, in such manner that the stamp-office duty payable by law on horses let to hire shall have been duly paid and satisfied, and except waiters.

Gardeners, &c. III. — To every gardener who shall have contracted for the keeping of any garden or gardens, (*wherein the constant labour of a person shall be necessary,*) and to every person who shall have been hired to work in any garden wherein the constant labour of one person shall be necessary, or where one person shall have been constantly employed, to be paid by the person or persons for whose use, and in whose garden such gardener or person shall have been employed, except as hereinafter mentioned. (52 *G.* 3. *c.* 93. *Sched.* (C), No. 1. *Rule* III.) See *Exemptions,* p. 419.

Apprentices. Parish apprentices. IV. — To all apprentices retained or employed in any of the capacities aforesaid, except such as shall have been imposed upon any master or mistress by virtue of the powers given to magistrates and parish officers by any act of parliament, so as the number of such apprentices for whom this exemption shall be claimed by the same person shall not exceed two, such apprentices (*being generally employed in the affairs of husbandry or trade, and occasionally only in any of the capacities herein mentioned.* not wearing livery [nor being employed as livery servants]. 52 *G.* 3. *c.* 93. *Sched.* (C), No. 1. *Rule* IV.

Game-keepers. V. — The duties on game-keepers shall extend to every person retained or employed to kill or preserve game for the use of any other person or persons, whether lawfully appointed to kill or preserve game or not, to be paid by the person or persons retaining, employing, [or appointing,] such persons respectively; except gamekeepers, being the servants of other qualified persons duly returned by, and charged to the said duties as servants of such other persons; and 52 *G.* 3. *c.* 93. *Sched.* (C), No. 1. *Rule* V.

59 G. 3. c. 118. Under-game-keeper not to be assessed as an additional servant, but shall be assessed after the rate of 10s. per annum. But stat. 59 *G.* 3. *c.* 118. § 5. After reciting that whereas doubts have arisen, whether by virtue of stat. 52 *G.* 3. *c.* 93. any person chiefly retained and employed for the purposes of preserving game as an under-keeper is liable to be assessed as a servant to the person or persons so retaining or employing such under-keeper; enacts "that any person or persons chiefly retained and employed for the purpose of preserving game, as an under-keeper under any game-keeper duly appointed by any lord or lady of the manor, such game-keeper being an assessed servant, shall not be liable to be assessed as an additional servant, but shall be assessed after the rate of 10*s.* *per annum,* and no more, unless such under-keeper be also employed in some other capacity by which he is liable to be assessed as a servant, under the provisions of the said recited act."

43 G. 3. c. 55. See stat. 59 G. 3. c. 118. § 2. post. Rule VI. — To every person who shall be employed in the capacity of a coachman, postillion, groom, or helper in the stables, although such person shall have been retained for the purposes of husbandry, or any manufacture or trade, where the master or mistress of such person shall be chargeable with duty for any carriage (other than a taxed cart), or for two or more horses chargeable with the duty on horses kept for the purpose of riding

or drawing carriages, as herein mentioned, and 52 *G.* 3. *c.* 93. *Sched.* (C), No. 2. *Rule* VI. 48 G.3. c.55.

VII. — To every person employed as a groom, stable-boy, or helper in the stables of the master or mistress, to take care of any horse, mare, or gelding, the property of such master or mistress, kept for the purpose of racing or running for any plate, prize, sum of money, or other thing, or in training for the said purposes. 52 *G.*3. *c.*93. *Sched.* (C), No. 1. *Rule* VII. Grooms employed to take care of race horses.

Schedule (C), No. 2. — 48 *G.* 3. *c.* 55. and Sched. (C), No. 2. 52 *G.* 3. *c.* 93. Duties payable annually for Male Servants retained or employed in the several Capacities herein mentioned. (*a*)

Exemptions from the Duties as set forth in Schedule (C), *No.* 1. [& 2. *now repealed, by* Stat. 4 G. 4. c. 11. § 1.]

Any person employed by the day or week to work as a day-labourer, at the usual rate of wages for day-labourers in agriculture, in any garden belonging to a dwelling-house, being a farm-house, and exempted as such from the duties mentioned in schedule (B), 48 *G.* 3. *c.* 55., or in any garden belonging to a dwelling-house not chargeable to the duties mentioned in the said schedule, such garden not requiring the constant labour of one such labourer; sed *quære*, if not expired, since the repeal of stat. 48 *G.* 3. *c.* 55. Sched. (C), No. 2. *supra*?

Schedule (C), No. 3. 48 *G.* 3. *c.* 55. and Sched. (C), No. 3. 52 *G.* 3. *c.* 93. — Duties payable annually for every Male Person or Servant retained or employed in the several Capacities herein mentioned, *and not chargeable to the Duties* in Sched. (C), No. 1.

				Additional by 52 G. 3. c. 93.		
For every male person employed [by any merchant or trader] as a traveller or rider, the duties following; *videlicet*,	£.	*s.*	*d.*	£.	*s.*	*d.*
Where one such traveller or rider, and no more, shall be so employed, the sum of	2	8	0	0	12	0
And where more than one such traveller or rider shall be so employed, for each the sum of - - -	3	10	0	1	10	0

Stat. 59 *G.* 3. *c.* 118. § 3. enacts, that after the 5th day of *April*, 1819, "the same employer or employers in partnership together, who shall employ more than four male persons in the capacity of, or as travellers to travel from place to place on foot, such shall be exempt for every male person so employed above the number of four. 59 G. 3. c. 118. Travellers on foot for sale of goods.

§ 4. It shall be lawful for the commissioners to reduce the amount of any assessments which shall have been made for the years ending 5th *April*, 1817; 5th *April*, 1818, and 5th *April*, 1819, on the employers of such travellers on foot, for any greater number of such travellers than four, according to the provisions

(*a*) Repealed by stat. 4 *G.* 4. *c.* 11. § 1.

59 G.3. c.116. of this act, and as if this act had been made prior to the 5th *April*, 1816; and in all cases where assessments so reduced shall have been previously paid by the parties, it shall be lawful for the commissioners to certify the numbers of travellers charged, and the amount which assessments shall have been diminished, with the cause thereof, to the commissioners of taxes; and in that case it shall be lawful for the said commissioners of taxes to direct the receiver-general to repay to the party the amount so reduced; but no such assessments shall be reduced, except upon a notice and declaration being delivered by the party making the claim to the surveyor, or the commissioners of the district; and the parties so making such claim shall appear before the said commissioners to verify the same as in cases of appeal.

48 G.3. c.55. Sch. (C), No.3. and 52 *G*.3. c.93. Sch. (C), No.3.

		Additional by 52 G. 3. c. 93.
For every male person employed [by any person in trade, or exercising any profession whatever,] as a clerk or book-keeper, or office-keeper, [except apprentices, where no premium, or a premium less in value than the sum of 20*l*. has been paid or contracted for with such apprentice, the duties following,] *videlicet*,	*£. s. d.*	*£. s. d.*
Where one such clerk, book-keeper, or office-keeper, and no more, shall be so employed, the sum of - -	1 4 0	0 16 0
And where more than one such clerk, book-keeper, or office-keeper shall be so employed, for each the sum of -	2 8 0	0 12 0
or every male person employed in the capacity of, or as a steward, bailiff, overseer, or manager, or clerk under a steward, bailiff, overseer, or manager, the sum of	———	2 0 0
For every male person employed by any person in trade as a shopman for the purpose of exposing to sale or selling goods, wares, or merchandise in such shop or warehouse, whether by wholesale or retail; and every male person employed as a warehouseman, porter, or cellarman in such shop or warehouse [except apprentices as aforesaid], the sum of - - - - -	1 4 0	0 16 0
And for every male person so employed, where the duty granted by the said act shall not be chargeable, the annual sum of	———	0 2 0

The said duties imposed by stat. 48 *G*. 3. *c*. 55. Sched. (C), No. 3. to be paid by the employer or employers of such persons, and to extend to every body politic or corporate, whether aggregate or sole, and to every society, fraternity, or partnership, although not corporate; and to every manufacture or concern (except husbandry) whereby the employer shall seek a profit.

But by stat. 59 *G.* 3. *c.* 118. § 2. It is enacted, that the duties imposed by the several acts for charging assessed taxes in *G. B.*, for every male person employed by any person in trade as a *shopman*, or in the capacity of a *groom*, *stable boy*, or *helper in the stables*, shall cease and determine, from and after the passing of this act, upon every assessment, made or to be made after the 5th day of *April*, 1819, in respect of every person, being the son of the employer or employers, or one of them occasionally resident with his parent or parents, and so employed by him, her, or them, during such occasional residence only; and in respect of every male person so employed, under the age of *fifteen years*, and wholly maintained and lodged in the house of his employer or employers, and in respect of any male person so employed, being of the age of *fifteen years*, or upwards, and bound an apprentice to his employer or employers, or assigned to him, her, or them, until such apprentice shall arrive at the age of twenty-one years, or upwards, and wholly maintained and lodged in the house of his employer or employers: provided always, that the cause of every such exemption shall be truly returned, and stated in the manner required by the acts in force at the time of passing this act. See *infra*.

59 G. 3. c. 118. Certain exemptions from duties on persons employed as *shopmen*, *grooms*, *stable boys*, or *helpers in stables*.

By stat. 4 *G.* 4. *c.* 11. § 5. It is enacted, that the powers and provisions contained in stat. 59 *G.* 3. *c.* 118. for giving relief from the duties charged on shopmen by the said acts to every male person wholly maintained and lodged in the house of his employer or employers, such persons respectively being under the age of *fifteen* years, shall, upon every assessment made or to be made after 5th *April*, 1823, be extended to all and every such male person described in the said act, being respectively under the age of *eighteen* years: provided always, that the causes of every exemption in respect of any such male person shall be truly returned and stated in the manner directed by the said act, and the several other acts in force before the passing of this act.

4 G. 4. c. 11. Former exemptions to shopmen under 15 years, extended to shopmen under 18 years of age.

By stat. 5 *G.* 4. *c.* 44. § 6. Reciting "whereas doubts have arisen whether the respective duties chargeable by the said acts on porters, and on overseers or managers extend to the employment of male persons on certain occasions, and it is expedient to remove such doubts;" it is enacted, "that for and in respect of any assessment to be made for any year commencing from and after 5th *April*, 1824, any male person hired by the employer or employers in the said acts described, by the year or by the week or otherwise, shall not be deemed and taken to be a porter chargeable with the said duties for or by reason of his employment in the loading, unloading, stowage, or removal of goods, wares, or merchandize from, to, or upon any horse, cart, waggon, or other carriage in the receipt or delivery of such goods, wares, or merchandize at the shop, warehouse, or place of deposit, unless such person shall also be employed in the drawing or taking of samples of goods, wares, or merchandize exhibited for the purposes of sale, at such shop or warehouse, or elsewhere; nor shall any person wholly employed in any mine, adventure, or concern under the superintendence and authority of one or more manager or managers, or one or more clerk or clerks, in such mine, adventure, or concern, (where the person or persons liable to the said duties by the

5 G. 4. c. 44. For removing doubts in the employment of *porters*, and of persons acting under clerks and managers in mines or adventures.

5 G.4. c.44. said acts shall be assessed for the duty for one overseer or manager at the least, and also for one clerk at the least,) be deemed and taken to be an overseer or manager, or a clerk under an overseer or manager, chargeable with duty, by reason of the employment of any such person under such manager or clerk in the overlooking and checking of labourers in the performance of the work and labour allotted to them in any such mine, adventure, or concern, and in accounting for the same to any such manager or clerk; any thing in the said acts to the contrary notwithstanding.

48 G.3. c.55. Sch. (C).

		Additional by 52 G. 3. c. 93.
	£. s. d.	£. s. d.
For every male servant employed as a waiter (except occasional waiters, over and above the ordinary number usually kept,) in any taverns, coffee houses, inns, alehouses, [or other licensed houses,] or in eating or victualling houses, or in hotels or lodging houses, [being] eating or victualling houses, the sum of - - - - - -	2 5 0	0 15 0
And for every male person so employed, where the duty granted by the said act shall not be chargeable - -	———	3 0 0
And for every male person so employed as an occasional waiter therein, for the period of six calendar months in the year	———	2 0 0
And if for a lesser period - -	———	1 0 0
And for every male person, not being a servant, employed as an occasional waiter in any private house, not less than six times in a year - - -	———	1 0 0
For every male servant retained by any stable keeper [*for or in expectation of profit*] to take care of any horse, mare, or gelding, [of any other person or persons,] kept for the purpose of racing or running for any plate, prize, sum of money, or other thing, or any horse, mare, or gelding, in training for any of the said purposes, [whereby such stable keeper shall gain a livelihood or profit,] *except servants chargeable as grooms or helpers in stables by sched.* (C), *No.* 1. *the sum of* - - - - -	1 4 0	0 16 0
And for every male person so employed, where the duty granted by the said act shall not be chargeable, the sum of -	———	2 0 0
And for every male person so retained and employed, where the duty granted by the said act shall not be chargeable, the sum of (*a*) - - - - -	———	0 10 0

For every male person employed in any of

(*a*) Repealed by stat. 4 G.4. c.11. § 1.

48 G.3. c.55. 52 G.3. c.93.

		Additional by 52 G. 3. c. 93.
the capacities enumerated in schedule (C), *No.* 1., *and not being a servant to his employer or employers, where such employer or employers shall be chargeable to any of the duties contained in schedule* (C), *No.* 1., *or for any carriage to the duties contained in schedule* (D), *No.* 1. *or No.* 2., *or for more than one horse to the duties contained in schedule* (E), *No.* 1., *the sum of* - - - -	*£. s. d.* ——	*£. s. d.* 2 8 0
And where such employer or employers shall not be so chargeable to the said last-mentioned duties, the sum of - -	——	1 0 0

The said duties to be paid by the employer or employers of such male person respectively, and to extend to every body politic or corporate, whether aggregate or sole, and to every society, fraternity, or partnership, although not corporate, employing such male persons, and to every trade, manufacture, or concern, whereby the employer shall seek a profit or advantage.

Exemptions to Schedule (C), *No.* 3.

Any apprentice bound for the term of seven years, during the term of his apprenticeship and service with his original master or his assignee of the whole unexpired term, where no premium or other consideration or value shall have been taken or contracted for with such apprentice.

Schedule (C), No. 4. 48 *G.* 3. *c.* 55. and Schedule (C), No. 4. 52 *G.* 3. *c.* 93. Duties payable on Servants let to hire.

		Additional by 52 G. 3. c. 93.
For every coachman, groom, postillion, or helper, kept for the purpose of being let to hire for any period of time less than one year, and in such manner that the stamp office duty payable by law on horses let to hire shall not be payable [on every such letting] by any postmaster, innkeeper, or other person, duly licensed to let post horses by the commissioners for managing the duties on stamped vellum, parchment, and paper, or by any coachmaker or maker of such carriages, or other person, the annual sum of - - - - -	*£. s. d.* 2 4 0	*£. s. d.* 0 6 0

The said duty to be paid by the person or persons letting the same to hire; provided, that if the person or persons hiring the same shall not make a return thereof according to the directions of this act, then and in every such case the progressive duty made payable by schedule (C), No. 1. and schedule (C), 52 *G.* 3. *c.* 93.) shall be chargeable in respect of every such servant on the person or persons hiring such servant, and making such default as afore-

48 G.3. c.55. 52 G.3. c.93. said, according to the number of servants retained by him, her, or them, in the manner directed by the act.

	£.	s.	d.
And for every coachman kept for the purpose of driving any public stage coach or carriage, for the purpose of conveying passengers for hire to and from different places, and for every person employed as a guard to such stage coach or carriage, the annual sum of -	2	10	0

The said last-mentioned duties to be paid by the employer or employers of such persons respectively.

The said duties to be paid by the person or persons keeping such public stage coaches or carriages, or letting to hire such coachmen, grooms, postillions, or helpers; provided, that if the person or persons hiring any such coachman, groom, postillion, or helper, shall not make a return thereof according to the directions of the said acts in force as aforesaid, then and in every such case the progressive duty made payable by the said act of 48 G. 3. c. 55. *and this act, as set forth in the respective schedules of the said acts marked* (C), *No.* 1., *shall be chargeable in respect of every such servant, on the person or persons hiring such servant, and making such default as aforesaid according to the number of servants employed by him, her, or them, in the manner directed by the said act.*

Exemptions from the last-mentioned Duties as set forth in Schedules (C), *No.* 1, 2, 3, *and* 4.; *and in Schedule* (C), *No.* 1, *and* 2. 52 G. 3. c. 93.

I. — The said duties not to be payable by any person who shall have retained or employed *bona fide* any male servant solely for the purposes of husbandry or manufacture, or of any trade or calling by which the master or mistress of such servant shall earn a livelihood or profit, and who hath not at any time or occasion, or in any manner, or for any purpose, been employed in any of the capacities enumerated in schedules (C), No. 1, and 2. nor in any of the capacities enumerated in schedules (C), No. 3, and 4. where on any duty is specifically made payable.

II. — The said duties not to be payable by any college or hall within either of the universities of *Oxford* or *Cambridge*, or the several colleges of *Westminster*, *Eton*, or *Winchester*, for any butler, manciple, cook, gardener, or porter; nor by any of the royal family, for any servant acting in any of the capacities aforesaid.

III. — The said duties not to be payable by any of the royal hospitals of *Christ*, *Saint Bartholomew*, *Bridewell*, *Bethlem*, *Saint Thomas*, in the *city of London*, and *borough of Southwark*, or *Guy's*, or the *Foundling Hospital*.

IV. — The said duties not to be payable by any officer serving in any regiment of horse or dragoons under the rank, or not receiving the pay of a field officer:

Nor by any officer serving in any regiment of artillery, infantry, royal marines, royal garrison battalions, or corps of engineers, for [any] *one* servant being actually a soldier in the regiment, troop, or company to which such officer shall belong:

Nor by any officer in H. M.'s navy, under the rank of a master and commander, in actual employ, for [any] *one* servant borne

upon the books of the ship to which such officer shall belong: 48 G.3. c.55. 52 G.3. c.93.

Nor by any officer on half pay from H.M.'s navy, army, or marines, who shall have been disabled by loss of a limb or wound received in H. M.'s service.

Every such officer retaining or employing one male servant only.

V. — The said duties not to be payable for any persons retained or employed in the above capacities, in the room of others who may be called out under any act which has been passed, or which shall be passed for training and exercising a military force within these kingdoms, during the time of such training and exercising.

Provisions by Stat. 43 G. 3. c. 161. *relative to the Assessment of Servants, according to the Duties in the preceding Schedules.*

43 G.3. c.161. Persons liable to duty on servants to return lists thereof.

By stat. 43 *G.* 3. *c.* 161. § 27. Every person retaining or employing any male servants or other male persons herein described, in the course of the year ending the day next before the respective days appointed for the commencement of the duties in the year 1804, shall, within six weeks thereafter, whether any previous notice for that purpose shall have been delivered or not, cause to be prepared particular lists in writing, signed by such person on his or her behalf; which shall contain the parish or place where such person shall then or usually reside; and one of such lists shall also contain the greatest number and the names of the several male servants or other male persons, retained or employed by them at any one time in the course of the year ending as aforesaid, and the several capacities in which they shall serve. And whenever the person required to return such lists shall be liable to the duty on servants kept by male persons never having been married, he shall denote the same by the letter B. And every such person shall cause such list to be delivered to the assessor of the parish or place where he or she shall reside, at or before the expiration of the time hereby appointed for delivery thereof; and every such person shall be charged for the greatest number of servants retained or employed at any one time in the year ending as aforesaid, and shall be assessed and charged by the respective assessors for the year commencing from that day, which assessments shall be made at the rate specified in schedule (C), and according to the lists which shall or ought to have been returned as aforesaid, subject to the powers of surcharge hereby directed and given.

Such persons to be charged according to such lists for the year commencing from those days.

§ 39. If any persons shall keep any male servants at places where they shall have no fixed residence, or shall come to reside in districts after the time for returning the lists before mentioned, not being charged therein, the assessor, surveyor, or inspector of the district, shall in every case within their knowledge, at any time deliver or leave the notices before directed at the house where such person shall be, or such servants shall be kept. And such person, or the person having the charge of such male servants, shall cause such lists (being previously signed by them as aforesaid) to be delivered to such assessor, surveyor, or inspector, within 21 days after delivery of such notice; and shall also deliver a declaration where they or the persons to whom such servants do

Proceedings where persons keep servants having no fixed residence, &c.

43 G.3. c.161. belong, have been assessed for that year to the duties hereby imposed, together with their respective places of abode, and the names of such persons; and in case the parties have not been duly and sufficiently assessed, or have delivered lists in other places, or shall not make any return, then they shall be chargeable to the duties hereby made payable, and for which returns ought to be made, either in the parish or place where such last-mentioned notice shall have been delivered, as if such person was actually resident therein, or in the parish or place where such persons shall have their ordinary residence. And if any person, after receiving such notice, shall remove without having delivered such list or declaration, he or she shall forfeit 50*l.*

With regard to livery stable-keepers, &c. letting servants to hire, see the regulations thereon, *post*, at the conclusion of schedule (F).

Schedule (D) No. 1. Stats. 48 *G.* 3. *c.* 55. and 52 *G.* 3. *c.* 93. duties payable on all Carriages of any of the descriptions mentioned herein.

NUMBER OF CARRIAGES.	Amount of Duty for each Carriage.			Additional by 52 G. 3. c. 93.		
For carriages with four wheels :	£.	s.	d.	£.	s.	d.
For 1 such carriage the annual sum of	11	5	0	0	15	0
2 - Do. - - - - -	12	7	0	0	13	0
3 - Do. - - - - -	13	10	0	0	10	0
4 - Do. - - - - -	14	0	0	1	0	0
5 - Do. - - - - -	14	12	0	1	3	0
6 - Do. - - - - -	15	3	0	1	5	0
7 - Do. - - - - -	15	14	0	1	6	0
8 - Do. - - - - -	16	5	0	1	7	0
9 - Do. and upwards -	16	16	0	1	7	0
And for every additional body successively used on the same carriage or number of wheels, the further *annual* sum of - - - -	5	12	0	0	14	0

58 G.3. c.17. Instead of the duties now payable on four-wheel carriages of a certain description, and not drawn by horses, &c. the following shall be paid. Duties.

Stat. 58 *G.* 3. *c.* 17. After reciting that it is expedient to reduce the duties payable on four-wheel carriages constructed and drawn in manner herein mentioned, enacts, that from 5th *April*, 1818, the duties imposed on four-wheel carriages of the description herein mentioned, and not drawn by any horses, mares, or geldings, or mules, shall cease and determine; and there shall be substituted, charged, and paid to H. M., his heirs and successors, the rates and duties following; viz.

For every carriage having four wheels of less diameter than 30 inches each, which in every respect shall be built, constructed, marked, and described as a taxed cart, according to the regulations prescribed by law for taxed carts, except as to the number of wheels as before mentioned, and which shall be drawn by any one poney or mule not exceeding twelve hands in height, or by an

ox or ass, and of which carriage the original price shall not have exceeded, or the value shall not at any time exceed, the sum of 15*l.* sterling, and which shall not be constructed with a spring or springs of any materials whatever, there shall be charged the annual sum of 1*l.* 9*s.*; and if such carriage shall be constructed with a spring or springs of any materials whatever, except of iron, steel, or any other metallic substance, either wholly or in part, there shall be charged the annual sum of 2*l.* 15*s.* 58 G.3. c.17.

For every carriage having four wheels of less diameter than 30 inches each, constructed, marked, or described in any manner different from a taxed cart, or contrary to the regulations prescribed by law for taxed carts, except as to the number of wheels as aforesaid, or constructed with a spring or springs of iron, steel, or any other metallic substance, or which shall be drawn by any two or more ponies or mules, not exceeding twelve hands in height, or oxen or asses as aforesaid, of which carriage the original price shall have exceeded, or the value thereof shall at any time exceed, the sum of 15*l.* sterling, there shall be charged the respective sums payable by law on carriages with less than four wheels, and according to the number of beasts used in drawing the said carriages with four such wheels as aforesaid, and the additional body or bodies successively used on the same carriage or number of wheels:

Provided, that for every such carriage with four wheels not constructed according to the directions of this act, or constructed according to the said directions, but drawn in any manner contrary to the said directions, there shall be charged the respective sums payable by law on carriages with four wheels.

4 G.4. c.11. One moiety of the duties on carriages shall cease.

By stat. 4 *G.* 4. *c.* 11. § 2. after reciting that whereas it is expedient to reduce such of the several duties of assessed taxes, granted to H. M. on carriages respectively hereinafter described, as are not wholly repealed by this act; it is enacted, that from and after the 5th of *April*, 1823, in *England*, *Wales*, and *Berwick-upon-Tweed*, on all assessments to be made for any year commencing from the day aforesaid, one moiety and equal half part of each and every of the duties on carriages with four wheels, and of each and every of the duties on carriages with two wheels, shall respectively cease and determine, and be no longer paid or payable: provided nevertheless, that the duties hereby reduced, and to be hereafter assessed, shall not include any fraction of one penny.

Reduced duties shall not include any fraction of 1*d.*

Duties how to be levied and paid.

§ 2. The said several duties on carriages shall be assessed, &c. under the regulations of the several acts in force before the passing of this act in relation to the duties of assessed taxes, &c.; and all powers, rules, penalties, clauses, matters, and things contained in such acts shall respectively, in the execution of this act, be duly observed, &c.

§ 3. Duties to be carried to the consolidated fund.

Schedule (D), No. 2. Stats. 48 *G.* 3. *c.* 55. and 52 *G.* 3. *c.* 93.

		Additional.
For carriages with less than four wheels:		
For every such carriage (except taxed carts constructed, kept, and used, under the regulations of this act,) (*except as to additional duty, such carriages in respect*	£. *s.* *d.*	£. *s.* *d.*

48 G. 3. c. 55. 52 G. 3. c. 93.

		Additional.
of which other duties are by 52 G. 3. imposed,) drawn by one horse, mare, or gelding, and no more - -	£. s. d. 5 18 0	£. s. d. 0 12 0
And for every such carriage, where the duty granted by the said acts shall not be chargeable - - - - -	———	6 10 0
And for every such carriage, drawn by two or more horses, mares, geldings, or mules - - - - - -	8 5 0	0 15 0
And for every additional body, of the description hereinafter mentioned, successively used on the same carriage or number of wheels, the further sum of -	2 16 0	0 7 0

Rules for charging the said Duties in the two foregoing Schedules.

I. — The said duties to be respectively charged for every coach, berlin, landau, chariot, calash, chaise-marine, chaise, sociable, or caravan with four wheels, *or more;* and for every calash, chaise-marine, chaise-curricle, chair, or car, with less than four wheels, or any number thereof respectively; and for every other carriage with four wheels, or with less than four wheels, respectively used or to be used for the like purposes, by whatever name or names the same shall be called or known, kept by any person or persons for his or their own use, or hired by the year, or any longer period; and upon all such carriages kept to be let out to hire, or to carry passengers for hire (except such carriages for which other duties are hereinafter made payable) and which duties shall be respectively paid by the person or persons keeping such carriages, and shall be chargeable upon the body, or, if more than one, upon the bodies of such carriages respectively, according to the number thereof successively used on the same carriage or number of wheels in the manner before directed, and not in respect of the wheels thereof, or any other parts of such carriages to which the wheels shall be attached.

A Schedule of the Duties payable on Carriages with less than Four Wheels, according to 50 *G.* 3. *c.* 104.

No. III.

50 G. 3. c. 104.

	£. s. d.
For every carriage with less than four wheels chargeable by the 48 *G.* 3. *c.* 55. with the duty of 5*l.* 18*s.* if drawn by one horse, mare, or gelding, and no more, there shall be charged the like amount of duty for every such carriage drawn by one horse, mare, gelding, or mule, and no more, viz. the annual sum of - - - - - - -	5 18 0
For every such carriage chargeable by the said act with the duty of 8*l.* 5s. if drawn by two or more horses, mares, or geldings, there shall be charged the like amount of duty for every such carriage drawn by more than one horse, mare, gelding, or mule, viz. the annual sum of - - - - -	8 5 0
And for any additional body successively used on the same carriage or number of wheels chargeable by	

the said act with the further duty of 2*l.* 16*s.*, there shall be charged the like amount of further duty, for every additional body successively used on the same carriage or number of wheels, if drawn in the manner herein mentioned, viz. the further annual sum of - - - - - - - £. 2 *s.* 16 *d.* 0

The said several duties on carriages with less than four wheels to be charged according to the rule in the schedule to the said act marked (D), No. 2., and to extend to all carriages with less than four wheels mentioned or described in the said act, and which shall not be built and constructed or used according to the regulations prescribed by the said act or this act for taxed carts.

Schedule (D), No. 3. 48 *G.* 3. *c.* 55. and Schedule (D), No. 3. 52 *G.* 3. *c.* 93.

		Additional.
For carriages hired for any period of time less than one year, or kept to be let to hire, or to carry passengers;	£. *s.* *d.*	£. *s.* *d.*
For every such carriage kept for the purpose of being let to hire, with horses to be used therewith, for any period of time not exceeding twenty-eight days, so that the stamp-office duty payable by law on horses let to hire shall be duly paid and satisfied on every such letting by any postmaster, innkeeper, or other person duly licensed to let post horses, by the commissioners for managing the duties on stamped vellum, parchment, and paper, and whereon the name or names and place of abode of the person or persons so licensed shall be marked or painted, according to the directions of the act in that case made and provided; if such carriage shall have four wheels, the sum of - - -	9 9 0	1 1 0
And if such carriage shall have less than four wheels, the respective sums mentioned in schedule (D), No. 2. according to the number of horses used therewith, as therein mentioned.		
And if such carriage shall have less than four wheels, the respective sums mentioned in schedule (D), *No.* 2. *in addition to the duties respectively granted thereon by the said* 48 G. 3. c. 55. *and* 50 G. 3. c. 104.		
And for every coach, diligence, caravan, or chaise with four wheels or more, or other carriage with four wheels or more, by whatever name the same shall be called or known, which shall be kept and employed as a public stage coach		

48 G. 3. c. 55. 53 G. 3. c. 93.

	£. s. d.	Additional. £. s. d.
or carriage for the purpose of conveying passengers for hire to and from different places, and which shall be duly entered as such with the said commissioners, the like sum of - - - -	9 9 0	1 1 0
All which last-mentioned duties shall respectively be paid by the person or persons keeping the same, for the purposes aforesaid.		
For every carriage kept for the purpose of being let to hire for any period of time less than one year, and in such manner that the said stamp-office duty shall not by law be payable on such letting by any person so licensed as aforesaid, or by any coachmaker or maker of such carriages, or other person, if such carriage shall have four wheels, the annual sum of - -	11 5 0	———

The said last-mentioned duty to be paid by the person or persons keeping the same for the purposes aforesaid.

	£. s. d.
For every carriage kept for the purpose of being let to hire, without horses to be used therewith, by any coachmaker, or maker of such carriages where such carriage shall have four wheels, the annual sum of	0 15 0
In addition to the duty of 11*l.* 5*s. granted by the said act passed in the* 48*th year of the reign of his late majesty.*	
And where such carriage shall have less than four wheels, the like sums mentioned in schedule (D), *No.* 2. *of this act.*	

Provided, if a due return thereof shall not be made by the hirer or hirers according to the directions of the acts herein mentioned, the progressive duty as set forth in 48 *G.* 3. *c.* 55. schedule (D), No. 1. and of 53 *G.* 3. *c.* 93. shall be chargeable in respect of every such carriage on the person hiring the same, and making such default as aforesaid, subject to the provisions contained in the said acts concerning the same.

And if such carriages shall have less than four wheels, the respective sums mentioned in schedule (D), No. 2. and 53 *G.* 3. *c.* 93. schedule (D), No. 2. according to the number of horses to be used therewith, to be paid by the person keeping the same for the purpose aforesaid, subject to the provisions hereinafter contained concerning the same.

50 G. 3. c. 104.

By stat. 50 *G.* 3. *c.* 104. § 1. certain other duties are granted as in the schedule to the act annexed; and by § 2. these duties are to be levied under stat. 48 *G.* 3. *c.* 55. *and the schedules relative to the same things added to the corresponding schedules in* 48 *G.* 3. *c.* 55., and by § 3. the persons acting as commissioners under that act, are also commissioners for the present act.

Makers of taxed carts to return their names, and keep accounts of carts sold.

§ 4. Every maker of any carriage called a taxed cart, built and constructed according to the regulations of stat. 48 *G.* 3. *c.* 55. or of this act, for sale, shall cause his name and place of abode, and the places where such business shall be carried on, to be returned to the commissioners, in like manner as is required

to be done by makers for sale of other carriages chargeable with duty, and under the like penalty; and every such maker shall also, from time to time, enter in a book the number of such carriages by him or her built and constructed for sale as taxed carts, and the names and places of abode of the persons to whom sold, and the full value of the same, together with the full and just price or other consideration for the same, and the day on which each such carriage was delivered or sent out of his shop or warehouse; all which books shall, at all reasonable times in the daytime, be open to the inspection of the assessor or collector, surveyor or inspector, of or for the place where such maker shall reside; and every person hereby required to enter and keep such account, shall, within twenty-one days after the 10th *October* and 5th *April* in every year after the 5th *April*, 1810, deliver a true copy in writing of every entry made in such book within the preceding half year, to the assessors or collectors of the ward, &c. or one of them, where such maker shall reside; and when required so to do by such surveyor or inspector, every such maker, his or her chief servant, workman, or manager, shall make oath, or affirmation, of the truth of such account according to the best of his knowledge and belief; and if any maker shall neglect to keep such account, or to deliver such copy thereof, or shall wilfully omit any description, matter, or thing which ought to be contained therein, or shall make therein any false entry of any particular which ought to be contained therein, he offending shall forfeit not exceeding 20*l.*, to be recovered or levied by any act or acts in relation to the duties of assessed taxes.

50 G. 3. c. 104.

Penalty 20*l.*

By stat. 4 *G.* 4. *c.* 11. § 4. It is provided, that so much of the provisions contained in any of the said acts (viz. 48 *G.* 3. *c.* 55. schedule (D), 50 *G.* 3. *c.* 104. § 5. 52 *G.* 3. *c.* 93. schedule (D), which require the words "A Taxed Cart," and the owner's christian and surname and place of abode, and also the name and place of abode of the maker thereof, and the full value thereof, or the actual price or consideration paid or given for the same, to be marked or painted on a black ground in white letters, on the outside of the black pannel, or black part of any carriage, shall from and after the passing of this act, 19th *March*, 1823, be and are hereby declared to be discontinued and repealed; but every such carriage last aforesaid shall in every other respect (except as herein varied) be built and constructed according to the regulations of the said acts, and the rules therein contained.

4 G. 4. c. 11. Makers of taxed carts need not paint owner's name, &c. thereon before delivery.

And by stat. 50 *G.* 3. *c.* 104. § 6. Every cart having the name and place of residence of the owner, and the words "*Common Stage Cart*" legibly painted thereon, which shall be kept truly and without fraud to be used wholly in the affairs of husbandry, or in the carriage of goods in the course of trade, although the owner or his servants occasionally ride therein when laden, or when returning from any place to which or when going to any place from which any load shall have been or shall be to be carried in such cart in the course of husbandry or trade, and although such cart shall be used for the purpose of riding therein or thereon, on the occasions and in the manner herein mentioned; that is to say, for the purpose of procuring medical assistance for the owner or any of his family, or for the purpose of carrying goods to or bringing back goods from market, or carrying the owner or any

50 G. 3. c. 104. Common stage carts may be used in certain cases.

50 G. 3. c. 104. of his family to or from any place of public worship, or to or from any election of members to serve in parliament, or to or from any courts of justice, or to or from any meeting of commissioners of taxes, shall be exempted from the duties granted by the said act or this act on carriages; provided such cart shall not have been let to hire for any of the said purposes.

On questions arising how carriages shall have been constructed, or of omission, commissioners to give notice to proprietors to produce the same before them for their adjudging the duty.

And by § 7. Whenever any question shall arise, whether from the manner in which any carriage with less than four wheels shall have been built or constructed, or shall be used, [or from the omission of painting thereon any of the particulars required by the said act or this act, or from painting the same contrary to the regulations (a),] the said commissioners shall give notice to the proprietor, or the person having the possession, to produce the same before the said commissioners on a day and at a place to be named in such notice; and upon the production thereof, the said commissioners, after due inspection thereof, shall adjudge the rate of duty at which the said carriage shall be charged, according to the best of their judgment and belief, subject to a case to be stated pursuant to the directions of the acts relating to the duties of assessed taxes, if such case shall be lawfully demanded; and if, after such inspection, any doubt shall remain with the said commissioners as to which of one or other of the said rates of duty the said carriage ought to be charged, it shall be lawful for them to charge such carriage to the lower of the said rates of duty, if they shall be of opinion that the particulars on which they entertained the doubt were not wilfully or fraudulently contrived for the purpose of evading the higher of the said rates of duty, subject to such case aforesaid; provided, that in every case where any reasonable doubt as aforesaid shall have arisen, and the commissioners shall be of opinion that the same hath been occasioned without any fraudulent contrivance or intention to defraud the revenue, it shall be lawful for them to remit and strike off the whole of the double duty which might have arisen or any increase of the duty chargeable in such case.

Schedule (D), No. 4. 48 *G.* 3. *c.* 55.

Imposing certain duties for taxed carts, which are repealed by stat. 4 *G.* 4. *c.* 11. § 1.

A Schedule of the Duties payable on Carriages called Taxed Carts, according to Stat. 50 *G.* 3. *c.* 104.

No. II.

50 G. 3. c. 104. For every such carriage called a taxed cart, built and constructed with a spring or springs of any materials whatever, (except of iron, steel, or any other metallic substance, or any composition of iron, steel, or other metallic substance, either wholly or in part,) the original price of which carriage shall not have exceeded, or the value whereof shall not — £. s. d.

(a) *Semb.* Expired since stat. 4 *G.* 4. *c.* 11. § 4. *ante*, p. 431.

at any time exceed, the sum of 21l. sterling, or which shall be used with a stuffed seat or cushion, or with a covered footboard or apron thereto fixed or not fixed, there shall be charged the annual sum of - £. 2 s. 10 d. 0 — 50 G.3. c.104.

Save and except always all carriages built and constructed as aforesaid, and of the respective values herein mentioned, and used in manner before mentioned, belonging to any person liable to be assessed to the duties granted by the said act in respect of a four-wheeled carriage, or liable to be asssessed to the duties granted by the said act on male servants, in respect of two such male servants, which persons respectively shall be charged for such carriages although built, constructed, valued, and used as aforesaid, at the rate prescribed in the schedule of the said act marked (D), No. II. or according to the schedule of this act, marked No. III. as the case may require.

The said several duties on taxed carts to be charged under the same rules, and subject to the same exemptions as the duties contained in the schedule of the said act of the forty-eigth year aforesaid, marked (D), No. IV. are directed to be charged.

Schedule (D), No. 4. Stat. 52 *G.* 3. *c.* 93.

For taxed Carts.

Note. — The additional duty of 2*s.* 6*d.* for taxed carts described in this schedule is repealed by stat. 4 *G.* 4. *c.* 11. § 1.

For every carriage called a taxed cart, built and constructed with a spring or springs of any materials whatever, except of iron, steel or other metallic substance, or any composition of iron or steel, or other metallic substance, either wholly or in part, the original price of which carriage shall not have exceeded, or the value whereof shall not at any time exceed, the sum of 21*l. sterling, or which shall be used with a covered or stuffed seat or cushion fixed or not fixed thereto, or with a covered footboard or apron thereto fixed or not fixed, the annual sum of* - £. 0 s. 5 d. 0 — 52 G.3. c.93.

In addition to the duty of 2*l.* 10*s. granted thereon, by the act passed in the* 50 G. 3.

And for every carriage with less than four wheels, constructed with a spring or springs of iron, steel, or other metallic substance, or any composition of iron, steel, or other metallic substance, the respective sums mentioned in schedule (D), *No.* 2. *in addition to the respective duties granted by the said acts passed in the* 48*th and* 50*th years of the reign of king* George *the third, on carriages with less than four wheels,*

All which duties in respect of carriages herein mentioned shall be charged upon and paid by the person or persons keeping the same respectively.

Save and except always all carriages built and constructed as aforesaid, belonging to any person or persons who are or shall be liable to be assessed to the before-mentioned duties in respect of a

52 G.3. c.93. *four-wheeled carriage, or who are or shall be liable to be assessed to the before-mentioned duties on male servants, contained in schedule* (C.), *No.* 1. *in respect of two such male servants, which persons respectively shall be charged for such carriages, although built and constructed as aforesaid, at the rate prescribed in the respective schedules marked* (D), *No.* 2. *of the said act of* 48 G. 3. c. 55. *and this act, for carriages with less than four wheels.*

Exemptions from the several Duties in Schedules (D), *No.* 1, 2, 3, *and* 4. (48 G. 3. c. 55.) *and from Duties in corresponding Schedules of* Stat. 52 G. 3. c. 93.

Case I. — Any carriages belonging to H. M., or any of the royal family.

Case II. — Any coach or coaches licensed by the commissioners for hackney coaches within the cities of *London* and *Westminster*, and the suburbs thereof, to be used as hackney coaches there, and numbered according to law.

Case III. — Any carriage kept by any coachmaker or maker of carriages, *bonâ fide* for the purpose of sale, or of being lent to any person whose carriage being of the same denomination or description shall be then making, mending, or repairing by such coachmaker or maker of carriages, and during the time the same shall be necessarily under repair; provided such carriage shall not at any time, whilst in the possession of such coachmaker or maker of carriages, be employed for his or her own use, or let to hire, or otherwise lent than as aforesaid.

Case IV. — Any *common stage*-cart which shall be kept truly and without fraud to be used wholly in the affairs of husbandry, or in the carriage of goods in the course of trade, and whereon the name and place of residence of the owner, and the words, "Common Stage Cart" shall be legibly painted, although the owner or his servant [or servants] shall or may, *for the purpose of driving or conducting the same only,* occasionally ride therein or thereon when laden, or when returning from any place to which, or when going to any place from which any load shall have been or shall be to be carried in such carriage in the course of husbandry or trade; or for conveying the owners thereof or their families to or from any place of divine worship on *Sunday*, or on *Christmas Day*, or on *Good Friday*, or on any day appointed for a public fast or thanksgiving, or for carrying persons going to or returning from the elections of members to serve in parliament, in case such carriage shall not have been or be used for any other purpose of riding thereon or therein save as aforesaid, or shall not have been or be let to hire for any of such purposes of riding therein or thereon.

Schedules (D), No. 5. Stats. 48 *G.* 3. *c.* 55. and 52 *G.* 3. *c.* 93. Duties payable by Coachmakers and Makers of other Carriages, chargeable with Duty by this Act, and on Carriages made or sold as herein mentioned.

	£. s. d.	Additional by 52 G. 3. c. 93. £. s. d.
By every person who shall carry on the trade of a coachmaker or maker of any carriages chargeable with duty by this act in *G. B.*, the annual duty of -	0 6 0	0 4 0

	£. s. d.	Additional by 52 G.3. c.93. £. s. d.
And where the duty granted by the said act shall not be chargeable thereon, the annual sum of - - -	———	0 10 0
By every such coachmaker or maker of such carriages as aforesaid, *and every dealer therein*, for every such carriage with four wheels which he shall make, build, or construct for sale, *or sell*, the sum of - - - - -	1 2 6	0 2 6
And where the duty granted by the said act shall not be chargeable thereon, the sum of - - - - - -	———	1 5 0
And for every such carriage with two (*less than four*) wheels which he shall make, build, or construct for sale, *or sell*, the sum of - - -	0 11 3	0 1 3
And where the duty granted thereon shall not be chargeable by the said act, the sum of - - - - -	———	0 12 6

A Schedule of the Duties payable by Makers of Carriages called Taxed Carts, chargeable with Duty by the said Act 48 G. 3. or this Act, and on the Sale of such Carriages by such Makers. 50 G.3. c.104.

	£. s. d.
Upon every maker or makers of any carriage built, constructed, and used according to the regulations prescribed by law for taxed carts, and of the values limited either by the schedule of the said act of the 48th year aforesaid, or by this schedule, there shall be charged the annual duty of - - - - -	0 2 6
By every such maker or makers of carriages as aforesaid, for every such carriage which he, she, or they shall make, build, or construct for sale, the sum of	0 2 6

The said several duties on such makers of taxed carts to be charged in the same manner as the duties contained in the schedule of the said act marked (D), No. 5. are directed to be charged.

Save and except any maker or makers of carriages with four wheels, or of carriages with less than four wheels, duly assessed as such to the duties contained in the said act of the forty-eighth year aforesaid.

	£. s. d. 52 G.3. c.93.
By every maker or makers of, or dealer in any carriage built, constructed, and used according to the regulations prescribed by this act for taxed carts, and of the values limited by the schedule of this act, the annual sum of - - - - - -	0 0 6
In addition to the duty of 2s. 6d. granted thereon by the said act;	
And where the duty granted by the said act shall not be chargeable thereon, the annual sum of - -	0 3 0
By every such maker or makers of carriages as last aforesaid, for every such carriage which he, or she,	

52 G. 3. c. 93.

	£.	s.	d.
or they shall make, build, or construct for sale, or sell, the sum of - - - -	0	0	6
In addition to the duty of 2s. 6d. granted thereon by the said act;			
And where the duty granted by the said act shall not be chargeable thereon, the sum of - -	0	3	0

Schedules (D), No. 6. of Stats. 48 *G.* 3. *c.* 55. and 52 *G.* 3. *c.* 93. Duties payable by Persons selling any Carriages chargeable with Duty by this Act, by Auction or on Commission.

	£. s. d.	Additional by 52 G. 3. c. 93. £. s. d.
By every person who shall sell any carriage chargeable with duty by this act, by way of auction or on commission, for or in expectation of profit or reward, the annual duty of - - -	0 6 0	0 4 0
By every such person for every such carriage with four wheels which he shall sell by auction or on commission, for or in expectation of profit or reward as aforesaid, the sum of - - -	1 2 6	0 2 6
And for every such carriage with two wheels, which he or she shall sell by auction or on commission, for or in expectation of profit or reward as aforesaid, *except taxed carts,* the sum of -	0 11 3	0 1 3
And for every such taxed cart - -	———	0 3 0

Provisions by Stat. 43 G. 3. c. 161. respecting the Payment of the various Duties on Carriages.

43 G. 3. c. 161. Persons who have kept any carriages in the year ending on the days appointed for the commencement of the duties in 1804, to return certain lists to the assessors.

By stat. 43 *G.* 3. *c.* 161. § 27. And every person who shall have kept any carriage, or shall have used the business of a coachmaker or seller of carriages by auction or on commission as aforesaid, in the course of the year ending on the day previous to the commencement of the duty in 1804, shall within six weeks thereafter, whether notice for the purpose have been delivered or not, cause to be prepared true and particular lists in writing signed by him or on his behalf, containing the parish or place where he shall then or usually reside; and also the greatest number of carriages described in the schedules kept by such person at any one time within such period, by its usual name, the particular kind of such carriage, by which the body or bodies are usually called or known, and distinguishing the number of such carriages with four wheels, from the number of those with less than four wheels, and also the number of bodies of such carriages which shall successively have been used on the same carriage or number of wheels, and also the number of such carriages liable as taxed carts; and another list, if the same shall be returned by any coachmaker or maker of carriages, or by any seller of such carriages by auction or on commission, shall contain the place or places where such trade shall be carried

on; and every such person shall cause such lists to be delivered to the assessor or assessors, or to be left at his or their dwelling-house or houses, or one of them, at or before the expiration of the time herein appointed for such delivery; and every person who shall have kept or used any carriages shall be charged for the greatest number thereof kept or used by him at any one time within the year ending as aforesaid; and every person who shall have used the business of a coachmaker or maker of carriages, or of a seller of carriages by auction or on commission, shall be assessed for the year commencing from that day, at the rate specified in the schedules aforesaid, and according to the lists which shall or ought to have been returned as aforesaid, subject to the powers of surcharge as herein given. 43 G.3. c.161.

Proceedings where persons keeping carriages have no fixed residence.

§ 39. If any person shall keep carriages at any place where he shall have no fixed residence, or shall come to reside in any district after the time for returning the lists before mentioned, not being charged therein, the assessor, surveyor, or inspector of the district shall in every case within his knowledge, at any time deliver or leave the notices before directed, at the house where such persons shall be, or such carriages shall be kept. And such person, or the person having the charge of such carriages, shall cause such lists (being previously signed by them as aforesaid) to be delivered to such assessor, &c. within 21 days after delivery of such notice; and shall also deliver a declaration where they, or the persons to whom such carriages do belong, have been assessed for that year to the duties hereby imposed, together with their respective places of abode, and the names of such persons; or in case no assessment, or no sufficient assessment has been made, then where they have delivered lists, in order to be assessed. And in case the parties have not been duly or sufficiently assessed, or shall not have made any return, they shall be chargeable to the duties hereby made payable, and for which returns ought to be made, either in the parish or place where such last-mentioned notice shall have been delivered, as if such person was actually resident therein, or in the parish or place where such persons shall have their place of ordinary residence. And if any person, after receipt of such notice, shall remove without having delivered such list and declaration, he shall forfeit 50*l*.

Coachmakers, &c. to keep accounts of carriages built, or sold by auction or commission.

§ 43. Every coachmaker, or maker of carriages, shall enter in a book the number and kinds of carriages by him built for sale, distinguishing the number of the wheels of each, and the number sold, and the names and places of abode of the persons to whom sold, and the day on which each carriage was delivered or sent out of his shop or warehouse. And every seller of carriages by auction or commission shall also enter in a book the number and kinds of carriages sold by him, distinguishing the number of wheels of each and the days on which such carriages were sold respectively; which books shall at all reasonable times in the day be inspected by the assessors, surveyors, or inspectors of the place, where such person shall reside. And every such person shall, within 20 days after the 5th of *July* and the 5th of *October*, 1804, and within 20 days after the 5th of *January*, and the 5th of *April*, the 5th of *July*, and the 5th of *October* in every subsequent year, deliver a true copy in writing of every entry made in such

13 G.3. c.161. book, during each preceding quarter, to the assessors, for the use of the inspector or surveyor, or to such surveyor or inspector himself; and when required by such surveyor or inspector, every such person, or his chief servant, manager, or workman, shall make oath or affirmation of the truth of such account; every copy of which shall, to the best of his knowledge or belief, express the christian and surname of every person therein required to be entered, and the place of his usual residence; on pain of forfeiting 50*l.* for neglecting to keep such account, or to deliver such copy thereof, or for wilfully omitting any description that ought to be inserted therein.

Penalty for neglect, 50*l.*

Proper forms for such accounts to be had at the tax-office.

§ 44. And forms for entering such accounts shall be prepared by the commissioners of taxes, and issued to every person applying for the same, and leaving his name and place of abode in writing at the tax-office, or with any surveyor of the district where such applicant shall reside. And at the end of the year every such account shall (all such entries being required to be first duly made) be signed by the party with his own proper name, in his usual manner of writing, and returned in like manner as aforesaid. And, in default of such application, the party shall provide, fill up, sign, and deliver the proper forms to the assessor, surveyor, or inspector, in like manner, on pain of forfeiting 50*l.* for neglecting to deliver up such accounts within the time limited.

Assessors, &c. to whom coachmakers, or sellers of carriages, shall deliver accounts, to certify the same to commissioners.

§ 45. And the assessor, surveyor, or inspector, to whom such account shall be delivered by any coachmaker or seller of carriages, shall return to the commissioners a certificate of the number of such carriages, of the several descriptions herein mentioned, by such persons respectively built or sold within the period of such account, and the amount of duty chargeable thereon: and the said commissioners shall cause an assessment to be made on the amount contained in each certificate, and added to the assessment of the other duties charged in the same parish or place, and shall cause the same to be inserted in the collector's duplicate, who shall demand and collect the same, at the same times, and under the same warrant, as the other duties.

With regard to the assessments on livery-stable keepers, &c. who let carriages and horses to hire, see the regulations therein, *post*, at the conclusion of schedule (F).

Schedules (E), No. 1. of Stats. 48 *G.* 3. *c.* 55. and 52 *G.* 3. *c.* 93. Duties payable for all Horses, Mares, and Geldings, kept and used for the Purpose of riding, or of drawing any Carriage chargeable with Duty by Schedule (D).

NUMBER THEREOF.	Amount of Duty for each Horse, Mare, or Gelding.			Additional by 52 G. 3. c. 93.		
	£.	s.	d.	£.	s.	d.
For 1 such horse, mare, or gelding -	2	13	6	0	4	0
2 - ditto - -	4	9	6	0	5	0
3 - ditto - - -	4	18	6	0	6	0
4 - ditto - -	5	2	0	0	8	0
5 - ditto - - -	5	3	0	0	8	6
6 - ditto - -	5	7	6	0	8	6
7 - ditto - - -	5	10	0	0	9	6
8 - ditto - -	5	10	0	0	9	6
9 - ditto - - -	5	12	0	0	9	6
10 - ditto - -	5	17	6	0	9	6
11 - ditto - - -	5	17	6	0	9	6
12 - ditto - -	5	17	6	0	9	6
13 - ditto - - -	5	18	0	0	9	6
14 - ditto - -	5	18	0	0	9	6
15 - ditto - - -	5	18	0	0	9	6
16 - ditto - -	5	18	0	0	9	6
17 - ditto - - -	5	18	6	0	9	6
18 - ditto - -	5	19	6	0	9	6
19 - ditto - - -	6	0	0	0	10	0
20 and upwards - - -	6	1	0	0	11	0

By stat. 4 *G.* 4. *c.* 11. § 2. After reciting that whereas it is expedient to reduce such of the several duties of assessed taxes granted to H. M. on horses respectively hereinafter described as are not wholly repealed by this act, it is enacted that from and after the 5th of *April*, 1823, in *England*, *Wales*, and the town of *Berwick-upon-Tweed*, on all assessments to be made for any year commencing from the day aforesaid, one moiety and equal half part of the duties on all horses, mares, geldings, or mules, shall respectively cease and determine, and be no longer paid or payable: provided nevertheless, that the duties hereby reduced, and to be hereafter assessed, shall not include any fraction of one penny.

4 G.4. c.11. One moiety of the duties on horses shall cease.

Reduced duties shall not include any fraction of 1*d*.

Rules by Schedules E. of Stats. 48 G. 3. c. 55. and 52 G. 3. c. 93.

48 G. 3. c. 55. 52 G. 3. c. 93. The said duties to be payable annually for every horse, mare, or gelding, used [*kept*] on any occasion for the purpose of riding, or of drawing any carriage for which any duty is payable by this act, or hired by the year, or any longer period, and to be paid by the person or persons using the same, except as after mentioned, *according to the greatest number kept by the same person at one time, in the course of the preceding year.*

Duty on horses used by butchers. But stat. 59 *G.* 3. *c.* 13. § 2. Enacts, that from the 5th *April* 1819, the progressive duties chargeable on horses, mares, or geldings, shall, in the cases hereinafter mentioned, be discontinued; and that from the said 5th *April,* 1819, there shall be charged and paid for every horse, mare, or gelding which shall be wholly used by any butcher, or his servant or servants in his trade, the annual sum of 2*l.* 17*s.* 6*d.*; provided that where such butcher shall so use two horses, mares, or geldings, and no more, there shall be charged for such second horse, mare, or gelding, the annual sum of 1*l.* 1*s.*

And on horses not exceeding thirteen hands high. By § 3. After the said 5th *April* 1819, the duties chargeable on horses, mares, or geldings not exceeding the height of 13 hands, used for the purposes of riding or drawing carriages, shall cease and determine; and from the said 5th of *April,* 1819, there shall be charged and paid for every horse, mare, or gelding, not exceeding the height of 13 hands, and used for the purposes of riding or drawing any carriage, the annual sum of 2*l.* 2*s.*: provided that nothing in this act contained shall take away the exemption or relief to which any person keeping and using any such horse, mare, or gelding is now by law entitled.

Duty on horse kept for bailiff. By § 5. After the said 5th of *April,* 1819, the duties payable in respect of one horse, mare, or gelding, *bonâ fide* kept for and usually employed by any bailiff upon the concerns of any farm or farms with which he may be entrusted, shall cease during the continuance of this act; and from and after the said 5th day of *April,* 1819, there shall be charged for any such horse, mare, or gelding so kept and used, the annual sum of 2*l.* 10*s.*

Exemptions from the said Duties in Schedules (E), No. 1.

48 G. 3. c. 55. 52 G. 3. c. 93. I.—Any person or persons who shall keep any horse, mare, or gelding, which shall be used truly and without fraud for the purpose of husbandry, or of drawing any carriage, except such carriages as are liable to any duty by this act, or carrying burdens in the course of the trade or occupation of the person to whom such horse, &c. shall belong, although such horse, &c. shall be used for riding when returning from any place to which any load or burden shall have by such horse, &c. been drawn or carried, or in going to any place from whence any load or burden shall be to be brought back by any such horse, &c. or on account of such

horse, &c. having been used for the purpose of riding to procure medical assistance, or for the purpose of riding to or from market, or any place of public worship, or any election of members to serve in parliament, or any courts of justice, or any meeting of the commissioners of taxes, provided such horse, &c. shall not on any occasion be used for any other purpose save as aforesaid. 48 G.3. c.55. 52 G.3. c.93.

II. — Any person occupying a farm as tenant at rack-rent, the rent of which shall be less than 70*l.* a year, and making a livelihood solely thereby; or any person occupying any estate on any other tenure than as tenant at rack-rent solely, or such estate, together with a farm at rack rent, the value of which in the whole shall be less than equivalent to a farm at the rack-rent of 70*l.* a year, (reckoning the value of every estate occupied by the owner thereof, or on any tenure other than as tenant at rack-rent, as equivalent to double the amount of the like farm at rack-rent,) and making a livelihood solely by such his own estate, or by such estate and farm jointly, and using occasionally for the purpose of riding any horse, &c. which shall be *bonâ fide* kept and usually employed for the purposes of husbandry.

III. — Any person occupying a farm *as tenant at rack-rent*, and making a livelihood solely thereby, or any person carrying on a trade, and making a livelihood solely thereby, or making a livelihood by such occupation and trade jointly; or any ecclesiastical person not possessed of an annual income of 100*l.* or upwards, whether arising from any ecclesiastical preferment or otherwise, for one horse, &c. used only for the purpose of drawing any carriage with less than four wheels, liable to the duty hereby made payable on taxed carts.

Provided always, that in every such case the said horse, &c. shall be duly returned, and the exemption hereby granted shall be duly claimed as directed by this act.

Schedules (E), No. 2. of Stats. 48 *G.* 3. *c.* 55. and 52 *G.* 3. *c.* 93. Duties payable on Horses let to hire.

		Additional by 52 G. 3. c. 93.
	£. s. d.	£. s. d.
For every horse, mare, or gelding, let to hire for the purpose of riding or of drawing any such carriage as aforesaid, for any period of time less than one year, in any manner so that the stamp-office duty payable by law on horses let to hire shall not be payable, the sum of	2 13 6	0 4 0

To be charged annually on the person or persons letting the same; provided, if a due return thereof shall not be made by the hirer or hirers, according to this act, the progressive duty, as set forth in schedule (E), No. 1. shall be chargeable in respect of every such horse, mare, or gelding on the person or persons hiring the same, and making such default as aforesaid, subject to the provisions of this act.

48 G.3. c.55.
52 G.3. c.93.

Schedules (E), No. 3. of Stats. 48 *G.* 3. *c.* 55. and 52 *G.* 3. *c.* 93. Duties payable on Horses kept for the Purpose of racing or running for any Plate, Prize, or Sum of Money, or other Thing, or kept in training for any of the said Purposes.

				Additions by 52 G. 3. c. 93.		
	£.	s.	d.	£.	s.	d.
For every horse, mare, or gelding, *bonâ fide* kept for the purpose of racing or running for any plate, prize, or sum of money, or other thing, or kept in training for any of the said purposes, whether in the stables of the proprietor or proprietors, or of any other person or persons, the sum of - -	2	13	6	0	4	0

The said duty to be charged annually on the person or persons having the custody, charge, or management of such horses, mares, or geldings.

48 G.3. c.55.

Schedules (F), No. 1. of Stat. 48 *G.* 3. *c.* 55. Duties payable for all Horses, Mares, and Geldings, not charged with any Duty according to the Schedules (E), No. 1, 2, and 3. and also on Mules.

	£.	s.	d.
For every horse, &c. not chargeable with any duty according to the schedule(E), No. 1, 2, and 3. as aforesaid, and for every mule, except in the cases hereinafter mentioned wherein other duties are made payable, the sum of - - - - -	0	14	0

52 G.3. c.93.

Schedules (F), No. 1. *of* Stat. 52 G. 3. c. 93. *Duties payable for all other Horses, Mares, or Geldings, not charged with any Duty according to the former Schedules of this Act, and on Mules (except such other Horses, Mares, Geldings, and Mules, for which other Duties are hereinafter made payable).*

	£.	s.	d.
For every such other horse, mare, or gelding, being of the height of 13 *hands or more, of four inches to each hand, and for every mule, the annual sum of* - -	0	7	0
In addition to the duty granted thereon by the said act passed in the 48 G. 3. c. 55.			
For every such other horse, mare, or gelding, being under the height of 13 *hands, of four inches to each hand, the annual sum of* - - - - -	0	3	0

Schedules (F), No. 2. of Stats. 48 *G.* 3. *c.* 55. and 52 *G.* 3. *c.* 93. contain the Duties payable on Husbandry Horses, which are repealed by Stat. 1 & 2 *G.* 4. *c.* 110.

Stat. 59 *G.* 3. *c.* 13. § 7. After reciting that whereas persons occupying farms in the cases specified in stats. 56 *G.* 3. *c.* 66. and 58 *G.* 3. *c.* 16. are deprived of the benefit of the reduced duties, if any horses, mares, or geldings shall be lent or let by them for hire; enacts, that nothing in the said recited act contained shall extend so as to preclude any occupier of land therein described from the benefit of the reduced assessment therein mentioned, by reason of his, her, or their lending or letting any horse or horses, mare or mares, gelding or geldings, in respect of which such reduced assessment shall be made, to be employed solely *bonâ fide*, and for no other purpose whatsoever, except for the purposes of agriculture, or for the making or repairing of roads, or for drawing coal, wood, peat, or turf for consumption as fuel in any private house or houses, and not for the purposes of sale. 59 G.3. c.13. Proviso for lending or letting of horses for the purposes of agriculture, &c.

§ 8. Enacts, that any tenant coming into the occupation of his or her farm at or after *Midsummer* in any year, may appeal to the commissioners for executing this act, and on proof to their satisfaction that he or she shall not have kept or used any horses, mares, or geldings, by him or her used in the cultivation of the said farm, prior to his or her coming into the occupation of such farm, shall be entitled to be released and discharged from one moiety of the annual assessment payable in respect of the said horses, mares, or geldings. On appeal. Tenants coming into occupation at Midsummer to be discharged from a moiety of the annual assessment.

By stat. 5 *G.* 4. *c.* 44. § 5. Occupiers of farms under 100*l.* *per annum*, and within the exemptions from horse-duty in the above acts are exempted from the duty on *dogs*, *bonâ fide* wholly kept and used by the occupier or his shepherd on his or her farm in the care of sheep. See this section at length, *post*, p. 452. 5 G.4. c.44.

By stat. 56 *G.* 3. *c.* 66. § 7. After the 5th of *April*, 1816, during the period limited by this act, for all mares which have been or shall be used wholly for the purposes of husbandry, and which at any time during the continuance of this act shall be kept for breeding, there shall be charged the like duties, and no other, as would have been chargeable in respect of the same mares if they had continued to be used for the said purposes of husbandry. 56 G.3. c.66. Duties on certain mares kept for breeding.

And by stat. 59 *G.* 3. *c.* 13. § 4. After the 5th of *April*, 1819, all mares which shall be kept for the sole purpose of breeding, shall, whilst so kept, be wholly exempt from duty. 59 G.3. c.13.

By stat. 1 & 2 *G.* 4. *c.* 20. The taxes in stat. 56 *G.* 3. *c.* 66. continued by stats. 58 *G.* 3. *c.* 16. and 59 *G.* 3. *c.* 13. were continued till 5th *April*, 1823. 1 & 2 G.4. c.20.

By stat. 1 & 2 *G.* 4. *c.* 110. intituled "*An act for repealing the duties imposed on husbandry horses, and to make perpetual several acts for reducing the duties on certain horses and mules.*" 1 & 2 G.4. c.110.

§ 1. After reciting that whereas by stat. 48 *G.* 3. *c.* 55. certain duties contained in the schedule marked (F) of the said act, were imposed and made payable on all horses, mares, and geldings, not charged with any duty, according to the schedule marked (E) of the said act, and on mules in the cases thereinafter mentioned, in lieu of certain duties thereby repealed: and whereas also by stat.

1 & 2 G. 4. c. 110.

52 *G.* 3. *c.* 93. certain other and additional duties were imposed and made payable on horses, mares, or geldings, and mules kept for the purposes of husbandry, which are severally contained in a schedule of the last-mentioned act marked (F, No. 2.): and whereas by stat. 56 *G.* 3. *c.* 66., the duties imposed by the acts before mentioned, on horses kept for the purpose of husbandry, were discontinued and suspended, so far as the same relates to persons occupying farms of the description and value therein mentioned, for two years, from the 5th *April*, 1816, and other duties substituted on persons occupying farms as tenants at a rack-rent less than 200*l.* *per annum*, and making a livelihood solely thereby, or any other estate therein described, of a value less than equivalent to a farm at the rack-rent of 200*l.* *per annum*, and making a livelihood solely by such estate, or by such estate and farm jointly: and whereas the said reduced duties were, by stats. 58 *G.* 3. c. 16. and 59 *G.* 3. *c.* 13. further continued until 5th *April*, 1821: and whereas by stat. 1 & 2 *G.* 4. *c.* 20. the said substituted duties were continued until 5th *April*, 1823: and whereas divers petitions, praying, amongst other things, for the repeal of the duties granted by the said recited acts, were presented to the commons in parliament assembled in the present session; which petitions, whilst the said act last before recited was pending, were referred to the consideration of a select committee of the said commons; and it was intended to make provision in the said recited act for allowing the amendment or repeal thereof in the present session of parliament, for the purpose of enabling parliament to give such relief to the said petitioners as to the wisdom of parliament should seem expedient; which provision was, by mistake, omitted to be inserted therein: and whereas, since the passing of the said last-mentioned act, leave hath been given by the commons, in parliament assembled, to bring in a bill to repeal the said duties, so far as they relate to and are imposed on horses, mares, geldings, or mules, kept and used for the purposes of husbandry only; and it is expedient that the said duties should be repealed after 5th *April*, 1822, and that the said act of the present session for continuing the said duties, depending upon and connected with the continuance of the duties granted by the two first-mentioned acts, and hereby repealed, should also be repealed from the same period: it is enacted, that from and after 5th *April*, 1822, the said several duties on persons, in respect of horses, mares, geldings, or mules, kept and used solely for the purpose of husbandry in *G. B.*, and all assessments thereon, shall severally cease and determine.

So much of 48 G. 3. c. 55. Sch. F. 52 G. 3. c. 93. Sch. F. (No. 2.) 56 G. 3. c. 66. 58 G. 3. c. 16. 59 G. 3. c. 13. 1 & 2 G. 4. c. 20. as relates to duties on husbandry horses repealed.

Power to discharge the assessment now in progress for three quarters of a year, after payment of one quarter's duty on husbandry horses.

§ 2. The assessments made or to be made on persons, in respect of horses, mares, geldings, or mules, before described for the year to end on the 5th of *April*, 1822, in pursuance of the acts hereinbefore mentioned, shall be in force for the purpose of collecting, levying, receiving, or paying the duties thereon, for one quarter of the said year, and no longer; and it shall be lawful for the respective commissioners, or any two or more of them, at their meetings to be held in the several counties, ridings, divisions, shires, stewartries, cities, wards, towns, and places in *G. B.*, after the end of the first quarter of the said year, and after payment of one fourth part of the duty assessed on the said persons for the said year, to discharge the remainder of the said duties so assessed on the said persons, and to make and return their schedules of dis-

charge thereof at the time and in the manner directed by the said acts, for making and returning their certificates of charge on assessed taxes for that year; and the said respective commissioners, and all persons acting under them in the execution of the said acts, and all parishes and places, and the inhabitants thereof respectively, shall be indemnified and exonerated from all claims, in respect of the proportion of the said assessments hereby directed to be discharged. 1&2G.4.c.110.

Power to discharge the duty on husbandry horses, compounded for three quarters of the present year. Proviso for persons who have compounded.

§ 3. And whereas under and by virtue of two acts, the one thereof passed in the 59 *G.* 3., and the other thereof passed in the 1 *G.* 4. divers persons have compounded for their assessed taxes in *G. B.*, under contracts which were made to continue in force for three years, and it is expedient to relieve the persons who have compounded for the duties on their horses, mares, geldings, or mules kept and used solely for the purpose of husbandry, for three quarters of the third year of their respective contracts, conformable to the repeal of the said duties before directed; it is enacted, that it shall be lawful for the commissioners, or any two or more of them, at their meetings to be held in their several counties, ridings, divisions, stewartries, cities, wards, towns, and places in *G. B.*, where any such contracts shall have been entered into, at any time after the payment of one-fourth part of the duty chargeable for horses, mares, geldings, or mules used for the purpose of husbandry contained in any such contract, and thereby made payable or becoming due within the third year of such contract, whether the amount of such composition shall be made payable quarterly or half-yearly, to discharge the residue of the duty on such horses, mares, geldings, or mules contained in any such contract, but nevertheless without discharging any part of the additional duty thereon contracted, thereby to be paid, and to make and return their schedules of discharge thereof, in the manner hereinbefore directed to be done in cases of assessment, under and subject to the like immunities and indemnities as are before declared concerning assessments.

The duties on mules used in carrying to cease.

§ 4. Enacts, that from and after the 5th *April*, 1821, the duties on mules, imposed and made payable on mules by any of the said acts, shall cease and determine in respect of all and every the person or persons who shall seek his, or her, or their livelihood by the carriage or conveyance of ore, slate, stone, or coal, or culm to or from the mine or pit, or by the carriage of lime, sea-sand, seaweed, or other manure; provided that such ore, slate, or stone, or coal or culm, sea-sand, sea-weed, or other manure, be loaded on the backs of such mule, and not otherwise.

Reduced duties on horses for riding, &c. granted for a limited period, made perpetual.

§ 5. And whereas by the said acts certain other duties of assessed taxes, in respect of horses, mares, or geldings, are reduced in certain cases therein described for a limited time, and it is expedient that the said reduced duties should be made perpetual; it is enacted, that the reduced duties imposed by the said acts on horses, mares, or geldings shall, in every case where the same are granted during the continuance of the said acts, be further continued and made perpetual by virtue of this act: provided always, that nothing in the said acts or this act shall be construed to affect any exemption to which the use of such horses, mares, or geldings, may entitle the person keeping the same, by any act passed prior to the granting of the said reduced duties.

1&2G.4. c.110. Act not to revive former duties repealed.

§ 6. Nothing herein contained shall be construed to revive any rate or duty imposed on horses, mares, or geldings, by any act or acts repealed by the said first-mentioned act of the 48 G. 3., or by any other act herein mentioned.

Provisions of the acts to remain in force for levying arrears.

§ 7. Nothing herein contained shall be construed to repeal any of the provisions of the said acts, relating to any of the assessed taxes, or any compositions for the same, other than the duties or compositions on such husbandry horses, mares, geldings, or mules before mentioned; nor any the provisions of the said acts, for making and completing the assessments and compositions on such husbandry horses, mares, geldings, or mules, for the present and all former years, &c., and for paying, &c. sums assessed, &c. and arrears of the said duties, prior to this act.

Exemptions from the Duties in Schedule (F), *Nos.* 1. *and* 2. *of Stat.* 52 G. 3. c. 93.

Any person whatever for any horse, mare, or gelding, which shall not at any time whatever have been used for any purpose of labour or otherwise.

Exemptions to the several Duties as set forth in the several Schedules marked (E) *and* (F), 48 G. 3. c. 55. and 52 G. 3. c. 93.

Case I. — Any horse, mare, or gelding, belonging to H. M., or any of the royal family.

Case II. — Any postmaster, innkeeper, or other person, licensed for that purpose by the commissioners appointed to manage the duties charged on stamped vellum, parchment, and paper, in respect of any horse, mare, or gelding, let to hire by him or her, in any manner where the stamp-office duty payable on horses let to hire shall be duly satisfied and paid on each letting, and which shall not, on any occasion, be used for any other purpose.

Case III. — Any person duly licensed to keep any carriage whatever, to be employed as a public stage coach or carriage for the purpose of conveying passengers for hire from different places in *G. B.*, in respect of any horse, &c. which is or shall be actually and solely used and employed by such person in drawing such stage coach or carriage from place to place [for hire].

Case IV. — Any person licensed by the commissioners for hackney coaches within the cities of *London* and *Westminster*, and the suburbs thereof, to keep any hackney coach or coaches, for any horses, &c. kept for the purpose of drawing such coach in respect of the duties in schedules (E), No. 1. and for two horses, &c. and no more, kept for the purpose of drawing each coach so licensed in respect to the duties in schedules (F), No. I.

Case V. — Any dealer in horses, assessed to the duties made payable by this act on such dealers, for any horse, &c. belonging to such dealer, and kept *bonâ fide* for sale, and not kept or used for any other purpose or in any other manner.

Case VI. — Any person who, on account of poverty, shall be discharged from the assessment made in respect of his dwelling-house, in pursuance of the regulations of any of the acts herein mentioned, for any horse, &c., provided such person shall not

keep more than one such horse, &c., and the same shall not be let to hire. 48 G.3. c.55. 52 G.3. c.93.

Exemptions.

Case VII. — Any rector, vicar, or curate, actually doing duty in the church or chapel of which he is rector, &c. who shall not be possessed of an income of 60*l.* *per annum* or upwards, whether arising from ecclesiastical preferment or otherwise; and who shall not keep more than one horse, &c. for the purpose of riding, which otherwise would be chargeable with duty according to the provisions of this act, except such person who shall occasionally perform the duty appertaining to any rector, vicar, or curate, without being the regular officiating minister of the parish or place in which such duty shall be performed.

Case VIII. — Any effective officer commanding a volunteer corps claiming and returning his exemption for such number (*not more than two*) of horses, mares, or geldings as he shall have been required to keep for H. M.'s service in such corps and no more, in the manner required by the said last-mentioned act.

Case IX. — Any field officer not being commandant, and any adjutant of any volunteer corps, and any person serving in any corps of yeomanry volunteer cavalry, or providing a horse, &c. for any other person serving in any such corps who shall be returned in the manner required by law as effective, and as having used any horse, &c. for such service on the several days of muster and exercise of such corps; provided in every such last-mentioned case the exemption shall be claimed and returned in the manner required by the said last-mentioned act, and a certificate shall be delivered of such effective service in the manner required by § 11. of stat. 44 *G.* 4. *c.* 44. intituled "*An act to consolidate and amend the provisions of the several acts relating to corps of yeomanry and volunteers in* G. B., *and to make further regulations relating thereto.*" 44 G.3. c.54.

Case X. — Any non-commissioned officer or private of any of the regiments of cavalry, or in the artillery, for any horse used in H. M.'s service.

Provisions by Stat. 43 *G.* 3. *c.* 161. relative to assessing the Duties on Horses.

Persons who shall have kept any horses in the years ending on the days appointed for the commencement of the duties in the year 1804, to return lists to the assessors, and be charged accordingly.

By stat. 43 *G.* 3. *c.* 161. § 27. Every person who shall have kept any horse or mule in the course of the year ending on the day next before the day appointed for the commencement of the duty therein in the year 1804, shall, within six weeks thereafter, whether any previous notice for that purpose shall have been delivered or not, cause to be prepared true and particular lists in writing, signed by him or on his behalf, which shall contain the parish or place where such persons shall then or usually reside, and also the greatest number of horses, mares, or geldings, kept by such person for the purpose of riding, or drawing any carriage chargeable with the duty hereby made payable, at any one time within the like period; and another list shall contain the greatest number of all other horses, &c. kept by such person as aforesaid, which shall on any occasion have been used as herein mentioned; and every such person shall deliver lists to the assessor where such person shall reside, or to

43 G. 3. c. 161. be left at his house, and shall be charged for the greatest number so kept or used by him within the period, by the assessors for the year commencing from that day; which assessments shall be made at the rate specified in the schedules (E), (F), and according to the lists, which shall or ought to have been returned as aforesaid, subject to the powers of surcharge hereby directed and given.

Directions for assessing persons keeping horses, who have no fixed residence, &c.

§ 39. If any persons retain or keep horses, &c. at places where they have no houses or places of residence, or shall come into or reside in any place after the time appointed for returning the lists, not having been charged therein, the assessor, &c. of the district shall, in every case within their knowledge respectively, deliver the notices before directed, at the house where such person shall reside, or where such horses, &c. shall be kept: and all such persons, and also every person having the care and management of such horses, &c. shall deliver lists (being previously signed by them as aforesaid) to such assessor, &c. within 21 days after delivery of such notice; and also a declaration where they, or the persons to whom the horses, &c. do belong, have been assessed for that year, to the said duties, together with their respective places of abode, and the names of such persons; or in case no such assessment, or no sufficient assessment shall have been made, then where they shall have delivered their list, in order to be so assessed. And in case the parties shall not have been duly or sufficiently assessed, or shall not have made any return, they shall be chargeable to the said duties, and for which returns ought to be made, either in the parish or place where such last-mentioned notice shall have been delivered, as if such person actually resided there, or where such persons shall have their ordinary residence. And if any person, after receipt of such notice, shall remove, without having delivered such list or declaration, he shall forfeit 50*l*.

Penalty.

Regulations for assessing Stable-keepers, and others letting Horses, &c. to hire.

Persons letting to hire horses so that the stamp-office duty shall not be chargeable thereon, to deliver lists of the greatest number kept in the preceding year.

By stat. 43 *G*. 3. *c*. 161. § 40. Every person letting to hire any horses, so as not to be chargeable to the stamp-office duty on horses so let, shall annually return a list of the greatest number of the servants, carriages, and horses, kept by him at any time in the prior year, in like manner, and for the like period, and under the like penalties, as returns of other servants, carriages, and horses, subject to the duties hereby made payable, are directed to be made; and such list shall specify the name and place of abode of the persons for whose use or in whose service such servants, carriages, and horses shall have been or shall be employed, and the number let to hire to every such person, and the period of each letting, according to the number thereof, which shall or ought to be contained in such list; the said duties hereby made payable shall be charged on the persons letting or hiring such servants, carriages, and horses, as the case may require.

Hirers of horses, where the stamp-office duty shall not,

§ 41. And where any person shall hire, or shall have hired, any horses, so that the stamp-office duty shall not be chargeable thereon; or shall hire, or shall have hired, any servants or carriages, then such hirer shall annually return a list of the greatest

number of such horses, to the assessor of the parish or place where such hirer shall reside at the time such return ought to be made, in like manner, and within and for the like period, and under the like penalties as returns of other horses, &c. exempted from the annual duties by this act are directed to be made; and every such list shall specify the name and place of abode of the persons by whom, and the period for which, such respective hiring or letting shall be made.

43 G. 3. c. 161. — be payable, to return lists thereof.

§ 42. In case, however, the provisions of the preceding clause be not complied with, then the duties on such horses, shall be charged upon and paid by the persons, hirers of the same, by the surcharge of the assessor, surveyor, or inspector, over and above the penalty incurred for any neglect or omission; unless the persons letting the same shall have been brought into charge for the same respectively; and if any dispute shall arise, whether any charge has or has not been made, the proof thereof shall be on the hirer of such horses, so surcharged; who, on such surcharge, shall be permitted to allege the same on oath, or affirmation, or to prove the same by lawful evidence to be produced by him. But the party hiring the same shall not be exempted, unless the exemption, and the cause thereof, shall have been duly returned to the assessor as aforesaid; and where the said duties shall be chargeable on the hirers of such horses, making default, the progressive duties made payable thereon, by schedules (C) No. 1., (D) No. 1., and (E) No. 1., respectively shall be charged.

Surveyors may surcharge in case of neglect of hirers in making returns, and the progressive duties for one year to be charged on them, unless it be proved that the parties letting the same have been charged.

§ 43. Every livery-stable-keeper, or other person receiving any horses to stand at livery, and also every person letting horses to hire, so as not to be chargeable to any duty payable on horses let to hire, shall from time to time enter in a book an account thereof, and the number thereof, and the periods of each letting; which books shall, at all reasonable times in the day, be open to the inspection of the assessor, surveyor, or inspector of the place where such person shall reside; and every person hereby required to enter and keep such account, shall, within 20 days after the 5th of *July* and the 10th of *October* 1804, and within 20 days after the 5th of *January* and the 5th of *April*, the 5th of *July* and the 10th of *October* in every subsequent year, deliver a true copy in writing of every entry made therein respectively within the preceding quarter of the year, containing the several matters and things before directed, to the assessor of the place where he shall reside, for the use of the surveyor or inspector of the said duties, or to such surveyor or inspector; and, when required by such surveyor or inspector, every such person, or his or her chief servant or manager, shall make oath or affirmation of the truth of such account, according to the best of his knowledge and belief; and every such copy of the account shall, to the best of his or her knowledge or belief, express the christian and surname of every person required to be entered therein, and the place of his usual residence; and if any such person shall neglect to keep such account, or to deliver such copy thereof, or shall wilfully omit any description which ought to be contained therein, he shall forfeit 50*l.*

Stable-keepers, persons letting horses, &c. to keep books containing entries of certain particulars.

Penalty for neglect or omission, 50*l.*

48 G. 3. c. 161. Forms for entering such accounts to be had at the tax office.

§ 44. And the commissioners of taxes shall cause to be prepared and issued to every person applying for the same, and leaving his name and place of abode in writing at the tax-office, or with any surveyor for the district where such applicant shall reside, proper forms for entering the accounts, hereinbefore required to be made of the carriages and horses standing at livery, or delivered to stable-keepers or other persons to be kept, and of the servants kept by them, and also of servants, carriages, and horses so let to hire. And every such account shall, at the end of the year (all such entries being required to be first duly made) be signed by the party with his own proper name, in his usual manner of writing, and returned to such assessor of the parish or place where he shall reside, for the use of the surveyor or inspector of the districts, or to such surveyor or inspector as the commissioners of taxes shall direct, at the times hereinbefore required; and in default of such application, the party shall be obliged to provide proper forms for the said purpose, and shall cause all such entries to be duly made therein, and the same to be signed and delivered to the assessor, surveyor, or inspector, in like manner, on pain of forfeiting 50*l.* for neglecting to deliver up such accounts within the time limited.

Gate-keepers, by whom certificates of horses so let to hire shall be filed, and farmers of stamp-office duties to permit surveyors to inspect them.

§ 46. And from and after the respective days appointed for the commencement of the said duties, every gate-keeper of any turnpike road, by whom any certificate shall be filed of horses let to hire, so as not to subject the hirer thereof to any stamp-office duty; and every collector or farmer of the said stamp-office duty, to whom such certificate shall be delivered by such gate-keeper, according to the laws then in force, shall, at all seasonable times, permit the surveyors or inspectors of the duties hereby made payable, to inspect such certificates *gratis*, and to take copies thereof, or of such parts thereof, as the said surveyor shall think necessary for securing the payment of the said duties; on pain of forfeiting 100*l.* for wilfully not permitting or refusing such inspection or copy.

Lists of persons licensed to let post horses to be transmitted to tax-office.

§ 47. And the name and place of abode of every person licensed to let post horses by the commissioners of stamps, shall annually be transmitted to the tax office, by the said commissioners, whenever the said duties shall not be let to farm, by the farmers and collectors of the said duties.

Schedules (G), of Stats. 48 *G.* 3. *c.* 55. and 52 *G.* 3. *c.* 93.

Duties payable on Dogs.

	£.	s.	d.
For every greyhound, hound, pointer, setting-dog, spaniel, lurcher, or terrier, the annual sum of -	0	11	6
For every greyhound kept by any person, whether the same be his property or the property of any other person or persons, the annual sum of - -	0	8	6
In addition to the duty of 11*s.* 6*d.* *granted by* stat. 48 G. 3. c. 55.			
For every dog of whatever description or denomination the same may be, where any person shall keep two			

or more dogs, either for his own use, or the use of any other person or persons, the annual sum of - £. 0 s. 11 d. 6 — 48 G.3. c.55. 52 G.3. c.93.

For every hound, pointer, setting-dog, spaniel, terrier, or lurcher, and for every other dog, where any person shall keep two or more dogs, of whatever description or denomination the same may be, except greyhounds, whether the same be the property of him, or of any other person or persons, the annual sum of - - - - - - - 0 2 6

In addition to the like duty granted by the said act.

For every dog not being a greyhound, hound, pointer, setting-dog, spaniel, lurcher, or terrier, kept by any person having one such dog, and no more, whether the same be kept for his own use, or the use of any other person or persons; the annual sum of - - - - - - - 0 7 0

For every other dog not being a greyhound, hound, pointer, setting-dog, spaniel, lurcher, or terrier, kept by any person having one such other dog, and no more, whether the same be the property of him, or any other person or persons, the annual sum of - 0 1 0

In addition to the duty of 7s. granted by the said act.

For every pack of hounds where the duty is compounded for, the annual sum of - - - - - 2 0 0

In addition to the duty of 34l. granted by the said act.

The said duties to be paid by the persons respectively keeping such dogs, or having the same in their custody or possession, whether the same be the property of him, or of any other person, and not discovering the owner thereof who shall have been duly assessed for the same.

Exemptions from the Duties in Schedules (G).

Case I. — Any dog belonging to H. M., or any of the royal family.

Case II. — Any person who, on account of poverty, shall be discharged from the assessment made in respect of his or her dwelling-house, in pursuance of the regulations of any of the acts herein mentioned, and having one dog and no more, the same not being a greyhound, hound, pointer, setting-dog, spaniel, lurcher, or terrier.

Case III. — Any person in respect of a dog or whelp, which at the time of returning the list of dogs as by this act is required shall not actually be of the age of six calendar months.

Case IV. — Any person in respect of the whole number of hounds by him kept in *G. B.*, who shall compound for the same, in any year within 30 days after the 5th day of *April* in such year, in pursuance of notice given to the collector or collectors of the said duty for any parish or place, where such person shall be liable to be assessed, of his or her intention so to do, and on payment of the full sum of 36*l.* sterling to such collector or

48 G. 3. c. 55.
52 G. 3. c. 93.

collectors, for which a receipt shall be given within the period before mentioned.

And where two or more persons join in keeping or using such hounds, then, in default of their compounding for the same as aforesaid, any or all of the said persons shall be chargeable for every such hound kept by them, or any of them.

5 G. 4. c. 44. Occupiers of farms under 100*l. per annum* exempted from the duty on dogs *bonâ fide* kept for care of sheep.

And by stat. 5 *G.* 4. *c.* 44. § 5. It is enacted, that upon all assessments to be made for any year or years commencing from and after 5th *April*, 1824, any person occupying a farm of less value than 100*l. per annum*, and making a livelihood solely thereby, as owner or tenant in the manner described in the said acts, (*semb.* those relating to assessed taxes, § 3.) and as applied to exemptions from the duties on horses, mares, or geldings, kept by such occupiers, and rode on the occasions therein mentioned, shall be exempt from the duty by the said acts granted in respect of any dog or dogs not being a greyhound, hound, pointer, setting-dog, spaniel, lurcher, or terrier, which shall have been or shall be *bonâ fide* and wholly kept and used by such occupier or by any person employed by him or her as a shepherd on his or her said farm in the care of sheep; provided that every such exemption shall be claimed and allowed in like manner as is directed by the acts relating to the assessed taxes in other cases of exemption therein mentioned.

Provisions by Stat. 43 G. 3. c. 161. respecting Duties on Dogs.

43 G. 3. c. 161. Persons keeping dogs, to return lists thereof, and be charged accordingly.

By stat. 43 *G.* 3. *c.* 161. § 27. Every person who shall have kept any dog in the course of the year ending the day before the day appointed for the commencement of the duty in 1804, shall, within six weeks thereafter, whether any previous notice for the purpose hath been delivered or not, cause to be prepared true and particular lists in writing, signed by such person, or on his behalf, which shall contain the parish or place where such person shall then or usually reside, and also the greatest number of dogs kept by such person within the like period; distinguishing therein any greyhound, hound, pointer, setting-dog, spaniel, lurcher, or terrier, from any other dog, where only one dog shall be kept; which list shall be delivered to the assessor of the district or place, or left at his house. And such person shall be charged for the greatest number of dogs so kept at any time within the period aforesaid by the assessors for the year commencing from that day; which assessments shall be made at the rate specified in schedule (G), and according to the lists which shall, or ought to have been so returned, subject to the powers of surcharge by this act given and directed.

Directions for assessing persons keeping dogs, and who have no fixed residence.

§ 39. If any person shall keep dogs at any place where he shall have no fixed residence, or shall come to reside in any district after the time for returning the lists before mentioned, not being charged therein, the assessor, surveyor, or inspector of the district shall, in every case within his knowledge, at any time deliver or leave the notices before directed at the house where such persons shall reside, or such dogs shall be kept. And such person, or the person having the charge of such dogs, shall cause such lists (being previously signed by them as aforesaid) to be delivered to

such assessor, surveyor, or inspector, within 21 days after delivery of such notice; and shall also deliver a declaration where they, or the person to whom such dogs do belong, have been assessed for that year to the duties hereby imposed, together with their respective places of abode, and the names of such persons; or, in case no assessment or sufficient assessment has been made, then where they have delivered lists in order to be assessed. And in case the parties have not been duly or sufficiently assessed, or shall not have made any return, they shall be chargeable to the duties hereby made payable, and for which returns ought to be made, either in the parish or place where such last-mentioned notice shall have been delivered, as if such person was actually resident therein, or in the parish or place where such person shall have their ordinary residence. And if any person, after receiving such notice, shall remove without delivering such list or declaration, he shall forfeit 50*l*. 43 G.3. c.161. Penalty 50*l*.

Schedule (H), of Stat. 48 G. 3. *c*. 55. Duties payable by Horse Dealers. 48 G.3. c.55.

		Additional by 52 G.3. c.93.
	£. *s*. *d*.	£. *s*. *d*.
Every person who shall use or exercise the trade and business of a horse dealer within the cities of *London* and *Westminster*, and the liberties of the same respectively, the parishes of *Saint Mary-le-Bone* and *Saint Pancras*, in the county of *Middlesex*, the weekly bills of mortality, or the borough of *Southwark*, in the county of *Surrey*, the annual duty of - - - - - -	22 10 0	2 10 0
Every person who shall use or exercise the trade and business of a horse dealer in any other part of *Great Britain*, the annual duty of - - -	11 5 0	1 5 0

But by stat. 59 *G*. 3. *c*. 13. § 4. All persons shall and may sell any horses which shall have been bred by them or kept by them as farming stock upon lands in their occupation, for the space of three months at the least, without being liable to be assessed to the duties payable by horse dealers. 59 G.3. c.13. Persons selling horses bred by them, &c.

Provisions by Stat. 43 G. 3. c. 161. regulating the Duties on Horse Dealers.

§ 27. Every person who shall have exercised the trade or business of a horse dealer, in the course of the year ending the day next before the day appointed for the commencement of the duty in 1804, shall, within six weeks thereafter, whether any previous notice for the purpose hath been delivered or not, cause to be prepared a true and particular list in writing, signed by such person or on his behalf; which shall contain the parish or place where such person shall then or usually reside, and the place or places where such business hath been so exercised during the like period, and also the greatest number of horses, mares, or geldings kept by him at any time during such period, distinguishing whether they have been kept for sale or hire, or been used by him. Such 43 G.3. c.161. Persons having exercised the business of a horse dealer for the period within mentioned, to give notice thereof, and be assessed accordingly.

43 G.3. c.161. list is to be delivered to, or left at the house of the assessor of the district or place where such trade hath been exercised: and every such horse dealer shall be charged by the respective assessors for the year commencing from that day; which assessments shall be made at the rate specified in the schedule (H), and according to the lists which shall or ought to have been returned; subject to the powers of surcharge hereby given and directed.

Horse dealers to enter accounts of horses sold in books, to be inspected by the assessors, &c.

§ 43. Every horse-dealer shall enter in a book an account of the number of horses kept by him, whether for sale or use, distinguishing the number kept for each person respectively, and to what duty the same are liable; which book shall, at all reasonable times in the day, be open to the inspection of the assessor, surveyor, or inspector of the place, where such person shall reside; and every person hereby required to enter such accounts shall, within 20 days after the 5th of *July* and the 5th of *October*, 1804, and within 20 days after the 5th of *January* and the 5th of *April*, the 5th of *July* and the 5th of *October* in every subsequent year, deliver a true copy in writing of every entry made in such books during the preceding quarter, to the assessors, for the use of the inspector or surveyor, or to the inspector or surveyor himself. And when required by such surveyor or inspector, every such person, or his chief servant or manager, shall make oath or affirmation of the truth of such account; every copy whereof shall, to the best of his knowledge or belief, express the christian and surname of every person therein required to be entered, and the place of his usual residence, on pain of forfeiting 50*l*. for neglecting to keep such account, or to deliver such copy thereof, or for wilfully omitting any description that ought to be inserted therein.

Proper forms for such accounts to be had at the tax-office.

§ 44. And proper forms for entering such accounts shall be prepared by the commissioners of taxes, and issued to every person applying for the same, and leaving his name and place of abode in writing at the tax-office, or with any surveyor of the district where such applicant shall reside. And every such account shall, at the end of the year (all such entries being required to be first duly made), be signed by the party with his own proper name, in his usual manner of writing, and returned in like manner as aforesaid. And in default of such application, the party shall provide, fill up, sign and deliver the proper forms to the assessor, surveyor, or inspector in like manner, on pain of forfeiting 50*l*. for neglecting to deliver up such accounts within the time limited.

Horse dealers trading at different places, to deliver returns at each, and declare where they will be charged.

§ 48. Every horse dealer, who shall carry on that trade at divers places, and is or may be desirous of paying the duties at one of such places (such places not being within different limits) as set forth in schedule (H), shall deliver a declaration at each place, declaring therein the particular place where he intends to be charged for the duty, to enable the assessor at such place to charge the same accordingly, on pain, for offending in any of the particulars before mentioned, of being chargeable at either place, and, for neglecting to make such return, of forfeiting 20*l*. But every horse-dealer in *London*, *Westminster*, the liberties of the same, the parishes of *Saint Mary-le-Bone* and *Saint Pancras*, *Middlesex*, the weekly bills of mortality, or the borough of *Southwark*, shall be charged and pay the duties in respect thereof in such of

the said places where such business shall be carried on within the last-mentioned limits. 43 G.3. c.161.

Schedule (I), of Stat. 48 G. 3. *c.* 55. Duties payable by Persons in respect of Hair Powder used or worn by them. 48 G.3. c.55.

	£.	s.	d.
By every person who shall have used or worn any hair powder within the period limited by any of the acts herein mentioned, the annual sum of - -	1	3	6

Rules (by Stat. 48 G. 3. c. 55.) for charging the said Duties.

I.—The said rate or duty to extend to every sort or composition of powder used or worn by any person as an article of, or in, or about, his dress, by whatever name the same shall be distinguished, and to be assessed upon and paid by the person having used or worn the same within the year preceding the term for which the assessment ought to be made, except as hereinafter mentioned.

II.—The unmarried daughters of any person shall not be chargeable with the said last-mentioned duties by this act made payable, or with the duties payable at the time of passing this act, or be required to make any return under this act or the acts in force at the time of passing this act, provided the parent of such daughters shall have more than two unmarried daughters, and shall have given an account in any list by him delivered under this act, or the acts now in force, of the whole number of such daughters, and shall have required to be assessed and charged for the whole number by one assessment, in which case every such parent shall be assessed and charged in respect to the whole number of such daughters in twice the sum so payable on any single person for his having worn hair powder, which shall exempt the whole number of daughters from the said duties, and each of them; and neither the person giving such account, or any of the persons returned in such account, in respect of whom such charge shall be made, shall in such case be liable to any of the penalties imposed by this act, or the acts now in force, by reason of the duty not being paid for the whole number of such daughters.

III.—The master of any servant who shall have declared his intention to pay the duty which may be charged or chargeable as aforesaid in respect of such servant, and shall in any list returned by him have given a true account of all the servants by him kept, in respect of whom such duty shall be payable, setting forth the several capacities in which such servants are respectively kept, shall be charged for such servants; and in every such case, every such servant shall be deemed to be exempted from the said duties during his continuance in the same service; and also every servant who shall come into the service of such master in the room of such servant named therein, to serve in the same capacity during the year in which the duty shall be so charged; and no servant named in such list, or any servant serving such master in any capacity mentioned in such list, shall, during the year for which such duty shall be charged, be required for himself to make any

48 G.3. c.55. such return, or to pay the said duties, or either of them, nor be liable to any penalty by reason of not making any such return, or not paying the said duty.

Exemptions (by Stat. 48 *G*. 3. c. 55.) *from the said Duties*.

I. — Any of the royal family, and any of the menial servants of H. M., or any of the royal family.

II. — Any officer in actual employ in H. M.'s navy under the rank of commander; or any officer holding a commission in H. M.'s navy under the said rank, who shall be employed on the establishment of the royal hospital at *Greenwich*; or any subaltern or non-commissioned officer or private man belonging to any regiment in the army, artillery, militia, division of marines, or corps of engineers; or any person inrolled and actually serving in any volunteer corps or body of men associated for the defence of any city, town, or place, and for maintaining public tranquillity and good order within the same, whether of infantry or cavalry, which now are or hereafter shall be raised; provided that every such person inrolled and serving as aforesaid, so claiming to be exempted, shall make such return as by this act is directed with respect to the claim of exemptions; provided, that every such claim shall be proved by the certificate of the commanding officer of the corps, in the form in the schedule to this act annexed, marked (N), and according to the regulations of this act in other cases of exemption by such volunteers.

III. — Any clergyman who shall not be possessed of an annual income of 100*l*. or upwards, whether arising from ecclesiastical preferment or otherwise; or any preacher of any congregation of dissenters, or any person dissenting from the church of *England*, in holy orders, or pretended holy orders, who now is or at any time hereafter shall be entitled to the benefit of the statute made in the first year of the reign of the late king *William* and queen *Mary*, intituled "*An act for exempting their majesties' protestant subjects dissenting from the church of* England *from the penalties of certain laws*;" or of the statute made in the nineteenth year of the reign of H. M. *George* the third, intituled "*An act for the further relief of protestant dissenting ministers and schoolmasters*;" or of the statute made in the thirty-first year of the reign of H. M. *George* the third, intituled "*An act to relieve, upon conditions, and under restrictions, the persons therein described, from certain penalties and disabilities to which papists, or persons professing the popish religion, are by law subject*," and who shall not be possessed of an annual income of 100*l*. or upwards, however arising; and the income arising from any benefice or benefices shall be estimated on the average amount thereof, computed on the period of seven years next preceding that on which such exemption shall be claimed.

Schedule (K), of Stat. 48 G. 3. *c*. 55. Duties payable by Persons in respect of any Armorial Bearing or Ensign, used or worn by them, by whatever Name the same shall be called; *viz*.

	£.	s.	d.
By every such person chargeable with any duty made payable by this act, for any coach or other carriage, the annual sum of -	2	8	0

	£.	s.	d.	
By every such person not chargeable for any such coach or other carriage, but who shall be chargeable to any of the duties on inhabited houses, or to the duties on houses, windows, or lights, made payable by this act, the annual sum of - - -	1	4	0	48 G.3. c.55.
By every such person not chargeable for any such coach or other carriage, nor being chargeable to the said duties on inhabited houses, or to the duties on houses, windows, or lights, the annual sum of -	0	12	0	

The said duties to be paid by every person having used or caused to be used any armorial bearing or ensign, by whatever name the same is or shall be called, within the year preceding the term for which the assessment ought to be made, and to extend to every person who, within the said period, shall have been possessed of, or shall have kept or had, any coach or other carriage chargeable with the duty by this act, or any seal, plate, or other article, on which carriage, seal, plate, or other article, any armorial bearing or ensign is or shall have been, during the said period, painted, engraved, marked, or affixed, and whether such armorial bearing or ensign shall be registered in the college of arms or not.

Exemptions from the said Duties as set forth in Schedule (K).

Any of the royal family, or any person who shall, by right of office or by appointment, have worn or used any of the arms or insignia worn or used by the royal family, or used in any city, borough, or town corporate, in that part of *G.B.* before described.

Provisions by Stat. 43 G. 3. c. 161. respecting the Assessment of Duties for wearing Hair Powder and Armorial Bearings.

43 G.3. c.161.

Persons having worn hair powder or armorial bearings to return lists to the assessors, and be charged accordingly.

By stat. 43 *G*.3. *c*.161. § 27. Every person who shall have used or worn hair powder, or any armorial bearing or ensign, in the course of the year ending the day next before the day appointed for the commencement of the said duties in 1804, shall, within 6 weeks thereafter, whether any previous notice for the purpose hath been delivered or not, cause to be prepared true and particular lists in writing, signed by such person, or on his behalf; which shall contain the parish or place where such person shall then or usually reside, and shall distinguish therein the amount of the particular duty or duties to which such person is liable, and whether he is a housekeeper or one of the family, or a lodger, inmate, apprentice, or servant abiding in the house of any person; and every such list, returned by any occupier of any house or distinct apartment, shall contain the name and places of abode of the persons resident therein, distinguishing the like circumstances: and in case such householder or occupier, having unmarried daughters or servants, shall be desirous of being personally charged for them respectively, as herein allowed, then such lists shall contain the number and names of such unmarried daughters and of such servants (together with the capacities in which they serve) so to be charged to him. These lists are to be delivered to the assessors

43 G.3. c.161. of the district or place, or be left at their houses: and such person having worn hair powder or armorial bearings shall be charged by the respective assessors for the year commencing from that day: which assessments shall be made at the rates specified in the schedules (I), (K), and according to the lists which shall or ought to have been returned: subject to the powers of surcharge by this act given and directed.

48 G.3. c.55.
52 G.3. c.93.

Schedules (L), of Stats. 48 *G.* 3. *c.* 55. and 52 *G.* 3. *c.* 93.— Duties made payable in respect of killing Game. (*a*)

	£. s. d.	£. s. d.
Upon every person who shall use any dog, gun, net, or other engine, for the purpose of taking or killing any game whatever, or any woodcock, snipe, quail, or landrail, or any conies, in any part of *Great Britain:*		
If such person shall be a servant to any person duly charged in respect of such servant to the duties granted on servants by this act, and shall use any dog, gun, net, or other engine, for any of the purposes before mentioned, upon any manor or royalty in *England, Wales,* or *Berwick-upon-Tweed,* or upon any lands in *Scotland,* by virtue of any deputation or appointment, duly registered or entered as gamekeeper thereto, there shall be charged the annual sum of -	1 1 0	0 4 0
And where the duty granted by the said act shall not be chargeable in respect of such person, the annual sum of - -	——	1 5 0
And if such person as last aforesaid shall not be a servant for whom the said duties on servants shall be charged, there shall be charged the annual sum of -	3 3 0	0 10 6
And where the duty granted by the said act shall not be chargeable in respect of such person, the annual sum of - -	——	3 13 6
Upon every other person who shall use any dog, gun, net, or other engine, for any of the purposes before mentioned, *or shall take or kill by any means whatever, or assist* (*b*) *in any manner in the taking or killing by any means whatever, any game, or any woodcock, snipe, quail, or landrail, or any cony,* there shall be charged the annual sum of - -	3 3 0	0 10 6
And where the duty granted by the said act shall not be chargeable upon such person, the annual sum of - - -	——	3 13 6

(*a*) See title Game, § IV. Vol. II. p. 597.
(*b*) See note (*a*), in the following page.

48 G.3. c.55.
52 G.3. c.93.

Exceptions to the above Duties by both Acts.

I. — The taking of woodcocks and snipes with nets or springes.

II. — The taking or destroying of conies in warrens, or in any inclosed ground whatever, or by any person in lands in his or her occupation, either by himself or herself, or by his or her direction or command.

Rules in both Acts for charging the said last-mentioned Duties.

I. — Every person who intends to use or shall use any dog, gun, net, or other engine for any of the purposes mentioned in the schedules to these acts annexed, marked (L), shall, before he shall so use the same in any year, *and every person who intends to take or kill, or to* (a) *assist in the taking or killing any game, woodcock, snipe, quail, landrail, or coney, shall, before he shall so take or kill, or assist in the taking or killing the same,* pay in each year unto the collectors of the duties mentioned or referred to in the other schedules of this act, for the parish, ward, or place where he shall reside, if in *England*, or one of them respectively as aforesaid for the time being, the duty hereby made payable, and shall obtain a certificate thereof in the manner herein directed; which certificate shall continue in force until and upon the 5th day of *April* next after the time of issuing the same, and no longer.

II. — Every collector on application to him made by any person residing within the limits of his collection, and on payment to such collector of the duty hereby made payable, shall give a receipt for the same, which receipt shall be signed by such collector, and made out conformable to such of the forms for certificates in the schedules to these acts annexed, as the case may require; and every such receipt shall be a charge on the parish or place for which such collector shall be appointed for the sum therein expressed, in like manner, and to the like effect, as if the said sum had been previously assessed and levied by such collector under the warrant of the commissioners acting in the execution of this act, for which receipt the said collector shall be entitled to demand and receive from such person the sum of 1*s.* over and above the said duty, and no more, which sum shall be deemed the compensation to such collector for his pains and care in executing this act; and the duty so received shall be paid to the receiver-general or his deputy, at his or their next receipt of

54 G 3. c.141. Such of the duties in the schedule of stat. 52 G.3. c.93. as relates to persons assisting in killing of game, shall cease if the assistance be given to another who has obtained a certificate, &c.

(*a*) But by stat. 54 *G.3. c.*141. the duties, provisions, and penalties contained in this schedule relating to persons aiding or assisting, or intending to aid or assist in the taking or killing of any game, or any woodcock, snipe, quail, land-rail, or coney, in the manner hereinafter mentioned, shall, from and after the passing of this act, severally cease and determine; provided that the act of aiding and assisting as aforesaid, and in the said act mentioned (52 *G.3. c.*93.) shall be done in the company or presence and for the use of another person who shall duly have obtained a certificate in his own right, according to the directions of the said act, and who therein shall by virtue of such certificate then and there use his own dog, gun, net, or other engine, for the taking or killing of such game, woodcock, snipe, quail, landrail, or coney, and who shall not act therein by virtue of any deputation or appointment.

48 G. 3. c. 55.
52 G. 3. c. 93.
Rules for charging.

duties, in full and without deduction; provided that the receipts given for the duties contained in the schedules shall not be liable to any stamp duty whatever.

III. — Every such receipt being delivered to the clerk of the commissioners acting for the district where the person aforesaid shall reside, shall be exchanged for a certificate made out in one of the forms in the schedule to this act annexed, marked (N), corresponding with such receipt, which certificate the said clerk shall, on demand, make out and deliver *gratis* to such person in exchange for the said receipt.

IV. — The said receipts so exchanged, shall severally be entered by the said clerks respectively in books to be kept for that purpose, in the manner to be directed by the commissioners for the affairs of taxes; and the said books, together with the said receipts, being exhibited to the commissioners acting in the execution of this act for the district, and examined by them, shall be a sufficient authority to them from time to time to cause an assessment to be made on the several persons mentioned in such receipts in the respective sums paid by them, which assessments shall be of the like force and effect, in all respects, and shall be as binding on the several collectors and others acting in the execution of this act, and on the several parishes and places for which such collectors shall have been respectively appointed, as any assessment to be made by the said commissioners respectively under the regulations of the said acts under which they act as commissioners; and the said commissioners shall return duplicates thereof to the receiver-general, and to the commissioners for the affairs of taxes, in the manner directed by the said acts.

V. — The commissioners for the affairs of taxes shall cause a sufficient number of receipts to be distributed amongst the several clerks, and by them to the several collectors in their respective districts, and the said clerks respectively shall be accountable to the said commissioners for the affairs of taxes for the same; and the several collectors shall be accountable to the respective clerks for the same; and the said commissioners for the affairs of taxes shall also cause a sufficient number of forms to be used for certificates, according to the forms specified in the schedule to this act annexed, marked (N), to be distributed to the respective clerks in like manner.

VI. — In any district wherein no clerk shall be appointed to act in the execution of the said acts, the surveyor of the same district shall execute the duty of such clerk in all matters and things herein required to be done by such clerk, and in every such case the certificates herein required shall and may be issued by such surveyor, according to the directions of this act; and in every place for which one collector only shall be appointed, who shall be chargeable to the duty contained in this schedule, an acknowledgment in writing under the hand of such collector, that he is chargeable with the said duty, and delivered to such clerk or surveyor respectively as aforesaid, shall be a sufficient authority for such clerk or surveyor to issue a certificate to such collector, and to make an assessment of the said duty upon such collector as in other cases under this act.

VII. — Every master or mistress charged or liable to be charged to the duties on servants mentioned in the said schedule marked

(C), No. 1. annexed to this act, in respect of any gamekeeper, whether such person shall have been deputed or appointed by such master or mistress, or by any other person or persons, and every person granting a deputation or appointment to the servant of any other person, who shall be duly charged to the said duty on servants, in respect of such servant, whether as gamekeeper, or in any other capacity, with power and authority to use any dog, gun, net, or other engine, for any of the purposes mentioned in this schedule, (*to take or kill game by any of the ways mentioned in this schedule of* 52 G. 3. c. 93.) shall be at liberty to obtain a receipt and certificate on behalf of such servant, on payment of the duty for the same, in the manner before directed; and such receipt and certificate shall be a sufficient authority to assess the master or mistress, or person granting such deputation or appointment, and obtaining such receipt and certificate as aforesaid. 48 G. 3. c. 55. 52 G. 3. c. 93. Rules for charging.

VIII. — Neither the assessment of the duty hereby imposed, nor the payment thereof, nor the certificate delivered, nor any thing herein contained or done in pursuance of these acts, shall authorise or enable any person to use any dog, gun, net, or other engine, for any of the purposes mentioned in this schedule, *or to act in the manner described in schedule* (L), *52 G. 3, c.* 93. at any time or times, or in manner prohibited by any law in force at and immediately before the passing of these acts, nor unless such person shall be duly qualified so to do, under and by virtue of the laws in being; and all penalties and forfeitures, actions and suits, shall and may be prosecuted and maintained for such offences as if this act had not been made. (*And* 52 *G.* 3. *c.* 93. *schedule* (L), *IX.*)

IX. — No assessment or certificate under these acts, or payment of the duty thereby imposed, by or for any person acting under a deputation or appointment, shall be received in evidence, or be available in law or equity, in any suit or prosecution under this act, where proof shall be given of using any dog, gun, net, or other engine for any of the purposes mentioned in this schedule, (*or of doing or having done any act for any of the purposes mentioned in 52 G.* 3. *c.* 93. *schedule* (L),) out of the precincts or limits of the manor, royalty, or lands for which such deputation or appointment was made or granted. Gamekeepers' certificates confined to manors

X. — If any person shall be found using any dog, gun, net, or other engine in *G. B.* for any of the purposes mentioned in this schedule in respect whereof such person shall be chargeable as aforesaid, *or doing any act in respect whereof such person shall be chargeable as in* 52 *G.* 3. *c.* 93. *schedule* (L) *aforesaid*, by any assessor or collector of the parish where such person shall then be, or by any commissioner for the execution of these acts, acting for the county, riding, division, or place in which such person shall then be, or by any lord or lady, or gamekeeper of the manor, royalty or lands wherein such person shall then be, or by any inspector or surveyor of taxes acting in the execution of these acts for the district in which such person shall then be, or by any person duly assessed to the duties granted in this schedule, or by the owner, landlord, lessee, or occupier of the land in which such person shall then be, it shall be lawful for such assessor, collector, commissioner or gamekeeper, inspector or surveyor, or other person as- Certificate produced by persons on demand of assessor, &c.

48 G. 3. c. 55. 52 G. 3. c. 93. Rules for charging.

cessed as aforesaid, or such owner, landlord, lessee, or occupier of land as aforesaid, to demand and require from the person so using such dog, gun, net, or other engine, *or so acting*, the production of a certificate issued to him for that purpose, which certificate every such person is hereby required to produce to the person so demanding the same, and permit him to read the same, and (if he shall think fit) to take a copy thereof or any part thereof; or in case no such certificate shall be produced to the person demanding the same as aforesaid, then it shall be lawful for the person having made such demand to require the person so using such dog, gun, net, or other engine, *or so acting*, forthwith to declare to him his christian and surname, and place of residence, and the parish or place (if any) in which he shall have been assessed to the duties by this act granted; and if any such person shall, after such demand made, wilfully refuse to produce and show a certificate issued to him for that purpose, or in default thereof, as aforesaid, to give in to the person so demanding the same his christian and surname, and place of residence, and the parish or place (if any) in which he shall have been assessed, or shall produce any false or fictitious certificate, or give any false or fictitious name, place of residence, or place of assessment, every such person shall forfeit and pay the sum of 20*l.* to be sued for, recovered, and applied in like manner as any penalty may be sued for, recovered, and applied by the acts herein mentioned, relating to the duties under the management of the commissioners for the affairs of taxes; provided, that the commissioners before whom the information for the said penalty shall be made shall also be justices of the peace of and for the same county, riding, division, or place where the said offence shall be commited.

[Stat. 52 *G.* 3. *c.* 93. *schedule* (L), *XI. says, the penalty of* 20*l. shall be sued for, recovered, and applied, in manner thereinafter directed.*]

Commissioners to advertise lists.

XI. — The commissioners for the affairs of taxes shall once, or oftener, in every year, as soon as conveniently may be after such certificates shall have been issued, cause the names and residences of the several persons to or for whom such certificates have been granted for that year, in each county in *G. B.*, distinguishing the persons acting under any deputations or appointments from others, and the manors, royalties, or lands for which deputations or appointments have been granted; and also distinguishing the rate of duty assessed, to be inserted in some newspaper circulated in each respective county, or in such other newspaper, and in such manner as to them shall seem proper. (*This is in* stat. 52 *G.* 3. *c.* 93. *rule VIII.*)

Acting without certificate.

XII. — If any person shall use any dog, gun, net, or other engine, for any of the purposes mentioned in this schedule, (*do any act for the purposes of* stat. 52 *G.* 3. *c.* 93. *schedule* (L),) without having obtained such certificate as is directed by these acts, in order to an assessment for the year wherein such person or persons shall so *act*, use such dog, gun, net, or other engine, every such person shall be liable to the duty of 3*l.* 13*s.* 6*d.* in the said schedules mentioned for that year, and also shall forfeit and pay the sum of 20*l.* over and above the said duty; and the said duty shall be assessed by way of surcharge, according to the directions of the said acts respectively, in the district where the offence

Penalty.

shall be committed; and the said penalty shall be sued for in like form and manner as any penalty may be sued for, prosecuted, and recovered by the acts herein mentioned, relating to the duties under the management of the commissioners for the affairs of taxes, or any of the said acts, *subject to appeal whenever such commissioners shall appoint the time and place for hearing and determining such appeal.*

48 G.3. c.55. 52 G.3. c.93. Rules for charging. Appeal.

By stat. 5 *G.* 4. *c.* 44. § 7. And whereas by the said acts, (relating to the assessed taxes,) and the rules therein contained, it is provided, that if any person shall do any act for any of the purposes therein mentioned, without having obtained a certificate in order to an assessment for the duty thereby granted and payable, in respect of taking or killing game, or doing other acts therein mentioned, every such person shall forfeit and pay the penalty of 20*l.*; and every such offender shall also be liable to the payment of the full duty to H. M., to be charged by way of increased charge by the inspector or surveyor in manner therein directed; and whereas doubts have arisen whether the inspector or surveyor in the said cases is authorised to charge for the game duty persons liable who have omitted to pay the said duty and obtain certificates thereof, without a previous proceeding against such offender, and a previous conviction thereon in the said penalty, or for some part thereof; and it is expedient to remove such doubts; it is enacted, that from and after the passing of this act, (3d *June,* 1824,) it shall and may be lawful for any inspector or surveyor acting in the execution of the said acts and of this act, without any previous information and conviction of the offender in the said penalty, or any part thereof, to charge, according to the provisions of the said acts, any person so chargeable with the said duty payable by persons in respect of their taking or killing game, or doing acts in the said acts mentioned, and who shall have omitted to pay the said duty, and obtain the certificate as by the said acts directed; provided every such charge be made within the period limited by the said acts, and in the single duty only; and which charges shall be allowed by the respective commissioners in the execution of the said acts, and shall be subject to appeal according to the provisions and directions thereof, in like manner as any charges are authorised to be made by any inspector or surveyor, and appeals therefrom heard and determined under the said acts; any thing therein contained to the contrary notwithstanding.

5 G.4. c.44. The inspectors or surveyors may, without a previous proceeding for the penalty, charge in single duty persons omitting to take out game certificates.

By stat. 52 *G.* 3. *c.* 93. Rule XIII. It shall be lawful for any two commissioners for executing this act, or for any one justice of the peace of the county, riding, or division, or the shire or stewartry, or for any city, borough, liberty, or place wherein any offence or offences mentioned or described in this schedule shall be committed, such justice being also a commissioner for executing this act; and he and they is and are hereby required, upon information or complaint to him or them made of any such offence or offences committed within the district where he or they shall act as such commissioner or commissioners, within three calendar months after the offence shall be committed, to summon the person or persons accused, and also the witnesses on either side, to appear before him or them; and upon the appearance of the person or persons accused, or in default of his or their appearance according to such summons, to proceed to hear and determine the matter in a summary way; and upon due proof made thereof, either by the volun-

52 G.3. c.93. Offences before whom determined, &c.

32 G. 3. c. 93. Rules for charging.

tary confession of the person or persons accused, or by the oath of one or more credible witness or witnesses, to give judgment for the penalty or penalties, or for such part thereof, to which part thereof the said commissioners or justice shall think proper to mitigate the same (the same not being in any case mitigated to less than one moiety of the said penalty or penalties); and in default of payment of the same at the time of conviction, to award and issue his or their warrant or warrants, under his or their hand and seal, or hands and seals, for levying the penalty or penalties so adjudged, together with the reasonable costs and charges attending the same as hereinafter directed, of the cattle, goods, and chattels of the offender or offenders, and to cause sale to be made of the said cattle, goods, and chattels so distrained, in case they shall not be redeemed within four days; and the money arising from such sale shall in the first place be liable for payment of the said penalty or penalties adjudged to be paid, and in the next place for payment of the costs attending the information, conviction, and warrant, or informations, convictions, and warrants, to be settled by the said commissioners or justice, and indorsed on such warrant or warrants; and also the reasonable costs attending the distress and keeping the goods and chattels distrained, and maintaining the cattle if any, during the four days allowed to redeem the same, and also the expence of the sale thereof, and of returning the said warrant or warrants to the commissioners or justice, and entering the same, with an indorsement thereon of what has been done therein; and where sufficient cattle, goods, or chattels of such offender or offenders cannot be found, to commit such offender or offenders to the house of correction, there to remain for any space of time not exceeding six calendar months unless the said penalty or penalties shall be sooner paid; and if such person or persons shall find himself or themselves aggrieved by the judgment of such commissioners or justice, then he or they shall and may, upon giving security to the amount of double the said penalty or penalties, appeal to the justices of the peace at the next general quarter sessions for the county, riding, or division, or to the justice clerk, or other officer of the court of justiciary of the shire, stewartry, city, liberty, or place in *Scotland;* which courts respectively are hereby empowered to examine witnesses upon oath, and finally to hear and determine the cause; and in case the judgment of such commissioners, or justice or justices, shall be affirmed, it shall be lawful for the said court of quarter sessions, or court of justiciary, to award the person or persons to pay costs occasioned by such information, conviction, and appeal, as to themselves shall seem meet.

Costs.

Commitment.

Appeal to the sessions, &c.

Witnesses attending.

XIV.—If any person or persons shall be summoned as a witness or witnesses to give evidence before such commissioners or justice receiving such information, or before the courts of quarter sessions or justiciary, upon appeal touching any of the matters contained in such information, either on the part of the prosecution, or the persons or persons accused, and shall neglect or refuse to appear at the time and place to be for that purpose appointed, without a reasonable excuse for his, her, or their neglect or refusal, to be allowed by the commissioners, or justice or justices, or court before whom the prosecution shall be depending, then and in every such case every such person shall forfeit for every such offence the sum of 10*l.*, to be recovered, levied, and paid in such manner,

and by such means, as other penalties mentioned in this schedule may be recovered, levied, and paid. 52 G. 3. c. 93.

XV. — The commissioners or justice before whom any offender shall be convicted shall cause the said conviction to be made out in the manner and form following, or in any other form of words to the like effect (*mutatis mutandis*); that is to say, Rules for charging.

BE it remembered, that on the ——— *day of* ———, *in the year of our Lord* ———, *at* ———, *in the* ——— *of* ———, A. B. *of* ——— *was duly convicted by me* [or, *us*] *of* [here state the offence], *and adjudged to pay the sum of* ——— *for his said offence.* Form of conviction.

Given under the hands and seals, or hand and seal, of ———, *being commissioners acting in the execution of the acts relating to assessed taxes for the district of* ———, or, ——— *being a justice of the peace for* ———, *and a commissioner acting in the execution of the acts relating to assessed taxes for the district of* ———.

And every such conviction shall be entered and registered upon the books of assessment of the commissioners of the district where the offence was committed; and after such entry and registry shall be transmitted to the court of appeal, as herein directed, to be filed there of record; and the said conviction or entry of the same in the said books of assessment, or any examined copy thereof, shall be received in evidence before the respective commissioners for executing this act, in all matters relating to the duties contained in this schedule; and no conviction of such commissioners or justice shall be removeable by any process whatever into any other court of law or equity, or be subject to any reversion in any manner, other than as aforesaid. Conviction to be entered.

XVI. — All penalties and shares of penalties imposed by and recovered or paid under the authority of the rules contained in this schedule shall be added to the first or supplementary assessment of the parish or place where the offence shall be committed (as the case shall require), and shall be paid to the collector or collectors of the duties contained in this schedule, for such parish or place, to be by him or them accounted for in the same manner, and paid to the receiver-general at the same times as the duties contained in this act are to be accounted for and paid, and shall and may be distributed, apportioned, and applied in such manner as other penalties may by the said acts relating to the said duties be distributed, apportioned, and applied. Application of penalties.

Exemptions from the Duties in Schedule (L) *in both Acts.* Exemptions.

I. Any of the royal family.

Schedule (M), No. 1. (48 *G.* 3. *c.* 55. and 52 *G.* 3. *c.* 93.)

Further Exemptions from the several Duties in the several Schedules marked (C), (D), (E), and (G).

All persons having ordinarily resided in *Ireland* before the commencement of the session of parliament in stat. 43 *G.* 3. (52 *G.* 3.) and being members of either house of parliament, whether on the 52 G. 3. c. 93. Exemptions Ireland.

52 G.3.c. 93. part of *Ireland*, or for any place in *G.B.*, and all persons who shall hereafter be members of the said parliament as aforesaid, and who shall have ordinarily resided in *Ireland* previous to the commencement of the session of parliament in which they shall respectively serve in parliament, and all persons having ordinarily resided in *Ireland* as aforesaid, or who shall hereafter be ordinarily resident therein, and now holding or who shall hereafter hold offices of public employments in *Ireland*, and are now residing in *G. B.*, or who shall hereafter reside in *G. B.*, with the approbation or by the order or direction of the lord lieutenant or other chief governor or chief governors of *Ireland* for the time being, or of his or their chief secretary for the time being, and which shall be certified under the hand of the lord lieutenant, chief governor or chief governors, or his or their chief secretary, to be therein resident for the purposes of assisting in the execution of public business, shall be wholly discharged and exempted from the duties set forth in the schedules to this act annexed marked (C), (D), (E), and (G); provided that this exemption shall not extend to any person ordinarily resident in *Ireland* as aforesaid, being a member of either house of parliament of the U. K., who hath resided or shall reside in *G. B.* longer than during the session of parliament, and 40 days before and 40 days after each session, nor to any article on which a duty is by this act made payable, which shall be retained, kept, employed, or used by such person in *G. B.*, during the residence of such person in *Ireland*: provided also, that this exemption shall not extend to any person ordinarily resident in *Ireland* as aforesaid, holding an office or public employment in *Ireland*, unless the approbation in writing, or such order or direction of the said lord lieutenant or other chief governor or chief governors of *Ireland* for the time being, or of his or their chief secretary for the time being, and a description of the place of abode in *G. B.* of the person respectively holding such offices or employment shall have been before the passing of this act delivered into the office of the commissioners for the affairs of taxes in *Somerset Place*, or shall be so delivered within 20 days after the passing of this act, with respect to persons then in *G. B.*, or within 30 days after the arrival in *G. B.* of such persons respectively, who shall thereafter arrive: provided also, that no person shall, for the purposes of claiming this exemption, be deemed to be ordinarily resident in *Ireland*, unless he shall reside therein during such portion of the year as is not covered by the privilege herein provided; and, for the better ascertaining the fact of such residence, every person claiming the benefit of this exemption, shall verify the same upon oath (if required) before the commissioners acting in the execution of this act, in the district where such person shall reside.

Schedule (M), No. 2. (48 *G.* 3. *c.* 55. and 52 *G.* 3. *c.* 93.) Further Exemptions from the several Duties in the several Schedules marked (C), (D), and (E).

Any sheriff of any county, or any mayor or other officer in any corporation or royal burgh, serving an annual office therein, who

during such year of service shall have kept or shall keep any number of servants, carriages, or horses, greater than the number such person was assessed to prior to the year of such service, and who shall have been assessed for such greater number for one year, shall be exempt from farther assessment for such greater number for any other year, although such year of service may have run into a second year of assessment.

Schedule (N), 48 *G.* 3. *c.* 55. and 52 *G.* 3. *c.* 93.

(1.)—Form of Certificate to be delivered by Members of Volunteer Corps.

I, ———, commanding officer of the ———, do hereby certify, in pursuance of an act passed in the forty-eighth year of the reign of his majesty George *the third, intituled, An act* [here insert the title of this act (*a*)], *that the several persons herein named and described are severally enrolled and serving in the said corps, and have duly attended at the muster and exercise of the said corps for ——— days in the course of the year next preceding the date hereof, which muster-rolls have been duly returned, testifying the same pursuant to the said act.*

(*Signed*) ———, *Commanding officer.*

Dated the ——— day of ———.

(2.)—Form of Certificate to be issued to every Gamekeeper, being a Servant for whom the Master or Mistress, or the Lord or Lady of the Manor or Royalty (*if in England*), or the Proprietor of Lands (*if in Scotland*), shall be duly assessed to the Duty on Servants.

N°. Game-Duty Certificate (A).

[To be used where the servant pays the duty.]

By *A. B.* clerk to the commissioners acting in the execution of the acts for assessed taxes, for the division of *I.* in the county of *L.*

RECEIVED from C. D. *residing in the parish* [or, *township*] *of* [here name the parish or township] *in the said county, an assessed servant of* E. F. [here name the master or mistress] *of* [here name the residence of the master or mistress] (*in exchange for this certificate*), *a receipt under the hand of* G. H., *one of the collectors of assessed taxes for the said parish* [or, *township*] *of* [here name the parish or township], *for the sum of one pound five shillings sterling, as the game duty chargeable upon the said* C. D., *in respect of his deputation as gamekeeper of the manor or royalty of* K. *in the said county* [if the certificate be granted in *England*, or if in *Scotland*, *in respect of his appointment of gamekeeper of the lands of* K. *in the said county*]. *Given in pursuance of acts*

(*a*) "An act for repealing the duties of assessed taxes, and granting new duties in lieu thereof, and certain additional duties to be consolidated therewith; and also for repealing the stamp duties on game certificates, and granting new duties in lieu thereof, to be placed under the management of the commissioners for the affairs of taxes."

passed in the forty-eighth and fifty-second years of the reign of George *the third, and certified the* ——— *day of* ———, *in the year of our Lord* ———.

(*Signed*) ———, *Clerk.*

This certificate will expire on the fifth day of April *next.*

(3.)—N°. Game-Duties' Certificate (B).

[To be used where the master pays the duty.]

By *A. B.* clerk to the commissioners acting in the execution of the acts for assessed taxes for the division of *I.* in the county of *L.*

RECEIVED *from* E. F. [here name the master or mistress], *residing in the parish* [or, *place*] *of* [here name the residence of the master or mistress], *in the said county, on behalf of* C. D. *an assessed servant of the said* E. F. (*in exchange for this certificate*), *a receipt under the hand of* G. H. *one of the collectors of assessed taxes for the said parish* [or, *township*] *of* [here name the parish or township], *for the sum of one pound five shillings sterling, as the game duty chargeable upon the said servant in respect of his deputation as gamekeeper of the manor or royalty of* K. *in the said county* [if the certificate be granted in *England*, or if in *Scotland*, *in respect of his appointment as gamekeeper of the lands of* K. *in the said county*]. *Given in pursuance of acts passed in the forty-eighth and fifty-second years of the reign of* George *the third, and certified the* ——— *day of* ———, *in the year of our Lord* ———.

(*Signed*) ———, *Clerk.*

This certificate will expire on the fifth day of April *next.*

(4.)—Form of Certificate to be issued to every Gamekeeper, not being an assessed Servant to any Person or Persons.

N°. Game-Duty Certificate (C).

By *A. B.* clerk to the commissioners acting in the execution of the acts for assessed taxes for the division of *I.* in the county of *L.*

RECEIVED *from* C. D. *residing in the parish* [or, *township*] *of* [here name the parish or township], *in the said county* (*in exchange for this certificate*), *a receipt under the hand of* G. H. *one of the collectors of assessed taxes for the said parish* [or, *township*] *of* [here name the parish or township], *for the sum of three pounds thirteen shillings and sixpence sterling, for the game duty chargeable upon the said* C. D. *in respect of his deputation as gamekeeper of the manor or royalty of* K. *in the said county* [if the certificate be granted in *England*, or if in *Scotland*, *in respect of his appointment as gamekeeper of the lands of* K. *in the said county*], *the said* C. D. *not being an assessed servant to any person or persons. Given in pursuance of acts passed in the forty-eighth and fifty-second*

years of the reign of George *the third, and certified the* ——— *day of* ———, *in the year of our Lord* ———.
(*Signed*) ———, *Clerk.*

This certificate will expire on the fifth day of April *next.*

(5.)—Form of Certificate to be issued to every Person not being a Gamekeeper.

N°. Game-Duty Certificate (D).

By *A. B.* clerk to the commissioners acting in the execution of the acts for assessed taxes for the division of *I.* in the county of *L.*

RECEIVED from C. D., *residing in the parish* [or, *township*] *of* [here name the parish or township], *in the said county* (*in exchange for this certificate*), *a receipt under the hand of* G. H. *one of the collectors of assessed taxes for the said parish* [or, *township*] *of* [here name the parish or township], *for the sum of three pounds thirteen shillings and sixpence sterling for the game duty, chargeable upon the said* C. D. *in his own right, throughout* Great Britain. *Given in pursuance of acts passed in the forty-eighth and fifty-second years of the reign of* George *the third, and certified the* ——— *day of* ———, *in the year of our Lord* ———.
(*Signed*) ———, *Clerk.*

This certificate will expire on the fifth day of April *next.*

Stat. 51 *G.* 3. *c.* 72. for granting exemptions in certain cases from the payment of the duties in respect of servants, carriages, horses, and dogs, kept in *G. B.* and *Ireland* respectively, after reciting that whereas by stats. 48 *G.* 3. *c.* 55. and 50 *G.* 3. *c.* 104. certain duties are granted to H. M. on male servants, carriages, horses for riding, or drawing the said carriages, and on dogs, to be annually assessed and paid throughout *G. B.*, which duties are placed under the management of the commissioners for the affairs of taxes in *G. B.*: and whereas by stat. 48 *G.* 3. *c.* 42. certain duties are also granted to H. M. on male servants, carriages, horses for riding, or drawing the said carriages, and on dogs, to be annually levied and paid throughout *Ireland*, which last-mentioned duties are placed under the management of the commissioners of inland excise and taxes, in *Ireland*: and whereas it is just and reasonable that persons residing partly in *G. B.* and partly in *Ireland* should not pay the duties granted by the said several acts for the same establishment of servants, carriages, horses, and dogs, in the same year in both parts of the U. K.; enacts, that every person who shall have paid the said duties so payable in *G. B.*, in respect of any such servants, carriages, horses, or dogs, for the period of one whole year, who shall also at any time within the same year, as hereinafter is provided, be charged to the said duties so payable in *Ireland*, for his or her servants, carriages, horses, or dogs kept in *Ireland*, (the said servants, carriages, horses, or dogs so kept in *Ireland*, being either the same servants, carriages, horses, or dogs, which are so charged in *G. B.* in such year, or servants in the same capacities, or carriages, horses, or dogs of the same descriptions,

51 G. 3. c. 72.

Persons paying the duties for servants and carriages, &c. in G. B., shall not be liable to pay for the same establishment in Ireland.

51 G.3. c.72.

chargeable in *G. B.* with the like duties, and kept in lieu of such of the said servants, carriages, horses, or dogs, as have been *bonâ fide* parted with,) shall be wholly exempted from payment in *Ireland* for one year of the duties so charged thereon, in respect of each and every of the said servants, carriages, horses, and dogs kept in *Ireland;* and every person who shall have paid the said duties so payable in *Ireland*, in respect of any such servants, carriages, horses, or dogs for one year, who shall at any time within the same year, as hereinafter is provided, be charged to the said duties so payable in *G. B.*, for his or her servants, carriages, horses, or dogs kept in *G. B.*, the said servants, carriages, horses, or dogs so kept in *G. B.*, being either the same servants, carriages, horses, or dogs, which are so charged in *Ireland* in such year, or servants in the same capacities, or carriages, horses, or dogs, of the same descriptions, chargeable in *Ireland*, with the like duties, and kept in lieu of such of the servants, carriages, horses, or dogs, as have been *bonâ fide* parted with, shall be exempted from payment in *G. B.* for one year, of so much of the said duties so charged thereon as the duty paid in *Ireland*, in respect of each and every of the same servants, carriages, horses, or dogs, or servants, carriages, horses, or dogs kept in lieu thereof respectively as aforesaid shall amount unto, provided that due proof shall be made of such payments in *G. B.* or *Ireland* respectively, in the manner hereinafter directed.

And persons paying in Ireland shall only be liable for amount of the duty in *G. B.*

Periods at which the respective duties commence.

§ 2. After reciting that whereas the said duties payable in *G. B.* are chargeable yearly, from the 5th of *April* in each year, and the said duties payable in *Ireland*, are chargeable yearly, from the 5th of *January* in each year; enacts, that proof of payment in *Ireland* in the manner herein directed, within any year, commencing on the 5th of *January* in such year, shall entitle the claimant to the exemption hereby granted in *G. B.*, for the year commencing on the 5th of *April* following, and proof of payment in *G. B.* in the manner herein directed for one year, from the 5th of *April* in any year, shall entitle the claimant to the exemption hereby granted in *Ireland*, within the year commencing on the 5th of *January* preceding.

Persons claiming exemption in *G. B.* to produce certificates of the payment of the duties in Ireland.

§ 3. Every person claiming to be exempted from any of the said duties in *G. B.*, by virtue of this act, shall produce and deliver to the surveyor or inspector of the district where such claimant shall reside, a certificate under the hand of the proper officer of the inland excise and taxes in *Ireland*, containing a true copy of the receipt and receipts given to such claimant on all such payments as aforesaid for the last year wherein such claimant was charged to the said duties in *Ireland*, which certificate shall either contain, or there shall be annexed thereto, a return containing the number of servants, carriages, horses, and dogs, paid for in *Ireland* by such claimant in the last year, and the names and capacities of the said servants, and the descriptions of the said carriages, horses, and dogs, as required by the said first recited acts, distinguishing which of the said servants, carriages, horses, or dogs, are the same with those so charged in *Ireland*, and which of them are kept in lieu of such of the said servants, carriages, horses, or dogs which have been parted with; and every such claim being first signed by the claimant in his or her own proper name, and in his or her usual manner

of writing, the same shall be transmitted to the commissioners for the affairs of taxes in *England*, and the said commissioners shall enquire and examine into the truth of every such claim in such manner as they shall think necessary; and the commissioners of inland excise and taxes in *Ireland* shall and they are hereby required to aid and assist the commissioners for the affairs of taxes in their enquiries and examinations into such claims; and whenever any such claims shall be duly proved to the satisfaction of the commissioners for the affairs of taxes in *England*, they shall certify the same to the commissioners of the district where such claims respectively shall be made, and shall give such directions for granting the required exemptions, either before or after assessment, as to them shall seem necessary, in order to give the relief granted by this act, and the assessment on every such claimant shall be made, discharged, altered, or amended accordingly. 51 G.3. c.72.

Amounts of such exemptions to be kept.

§ 4. The several amounts of duty so to be exempted in *G. B.* shall be retained and set down in figures in the several books and duplicates of assessments of the respective commissioners, under the head of "Exemptions on account of *Ireland*," and shall respectively be deducted from the whole duty chargeable on each claimant by virtue of the said recited acts, and the difference between the duty so chargeable and the amount of the sum to be exempted shall be set down as the net duty to be paid by each such claimant, and the duplicate thereof to be delivered to the collector of the parish, ward, or place where each such claim shall have been allowed, shall be made or amended in such manner, that the net duty only shall be demanded of or paid by each such claimant.

Persons claiming exemptions in Ireland to produce certificates of the payment of the duties in *G. B.*

§ 5. Every person claiming to be exempted from any of the said duties in *Ireland*, by virtue of this act, shall produce and deliver to the proper officer of inland excise or taxes in *Ireland*, a certificate under the hand of the said claimant containing the number of servants, carriages, horses, and dogs assessed on such claimant in *G. B.* for the last year of such assessment, together with the names and capacities of the servants, and the descriptions of the carriages, horses, and dogs charged therein, distinguishing which of the said servants, carriages, horses, or dogs are the same with those so charged in *G. B.*, and which of them are kept in lieu of such of the said servants, carriages, horses, or dogs which have been parted with, and also a true copy of the receipt and receipts given to such claimant on all such payments as aforesaid, for that year, containing the district or county, and the parish, ward, or place where such payments were made; and every such claim being first signed by the claimant, in his or her own proper name, and in his or her usual manner of writing the same, shall be transmitted to the commissioners of inland excise and taxes in *Ireland*, who shall enquire and examine into the truth of every such claim in such manner as they shall think necessary; and the commissioners for the affairs of taxes in *England*, shall and they are hereby required to aid and assist the commissioners of inland excise and taxes in *Ireland*, in their enquiries and examinations into such claims; and whenever any such claims shall be duly proved to the satisfaction of the commissioners of inland excise and taxes in *Ireland*, it shall be lawful for them to grant the

51 G. 3. c. 72.

said exemptions in such manner as they are authorised to grant other exemptions by any act or acts in force relating to the said duties.

Penalty on persons claiming exemptions fraudulently, to forfeit 100*l.*

§ 6. If any person shall make any such claim in *G. B.* without having first paid the duties in *Ireland* for the same articles, or for articles of the same descriptions with the articles for which such exemption is claimed; or if any person or persons shall make any such claim in *Ireland*, without having first paid the duties in *G. B.* for the same articles, or for articles of the same descriptions with the articles for which such exemption is claimed; or if any person shall be guilty of any fraud or contrivance with intent to evade the payment of any of the said duties, taxes, impositions, or sum or sums of money granted or made payable in *G. B.* or *Ireland* by virtue of the said recited acts, or any of them, either in making any such claim, or in obtaining any such exemption, or shall deliver any false or fraudulent certificate, with intent to obtain any such exemption, or shall make a second claim for the same cause, every such person so offending shall forfeit 100*l.*

How penalties shall be recovered and applied.

§ 7. In every case where the said penalty shall be incurred in *G. B.*, the same may be recovered, and applied, as any penalty for any offence committed against the said first recited acts, relating to the said duties payable in *G. B.*, may be sued for, recovered, or applied, in that part of *G. B.* where the said offence shall be committed; and in every case where the said penalty shall be incurred in *Ireland* the same may be sued for, recovered, and applied as any penalty for any offence committed against the last recited act, or any other act or acts in force in *Ireland*, respecting the same, may be sued for or applied in *Ireland*.

Exemptions to members of parliament and public officers not affected.

§ 8. Nothing in this act contained shall extend to or be construed in any way to affect any of the exemptions from the payments of the said duties granted and allowed by any act or acts of parliament, to members of parliament ordinarily resident in *Ireland*, or persons holding offices or public employments in *Ireland*, and being resident in *G. B.*, for the purposes of assisting in the execution of the public business, or to alter the manner of claiming such exemptions as granted and allowed by the said act or acts last mentioned.

§ IV. Relief by compounding for Assessed Taxes.

[59 G. 3. c. 51.—1 G. 4. c. 73.—1 & 2 G. 4. c. 113.—3 G. 4. c. 50.—4 G. 4. c. 11. c. 45.—5 G. 4. c. 44.

59 G. 3. c. 51.

Assessments for the year ending April 5. 1819, to continue at the same amount for three years.

Commissioners empowered to contract.

By stat. 59 *G. 3. c.* 51. intituled "*An act to relieve persons compounding for their assessed taxes, from an annual assessment for the term of three years,*" it is enacted, that the assessments made for the year ending on the 5th of *April*, 1819, shall remain to the same amount, in respect of all persons who shall compound for the annual payment thereof, for 3 years, to commence from the said 5th of *April*, 1819, upon the terms in this act mentioned; and it shall be lawful for the commissioners, or any two or more of them, in their respective divisions, to contract and agree with any persons assessed for the said year ended on the 5th day of *April*, 1819, and who shall apply for that purpose, for the composition of their assessed taxes, for the said period of 3 years; and all per-

sons assessed are declared to be competent to enter into composition with the said commissioners, for their assessed taxes for the term of three years, to commence from the said 5th day of *April*, on the same amount annually, together with an additional annual rate for every 20*s*. of the amount so assessed, to be ascertained in manner herein mentioned, except as hereinafter is provided.

59 G.3. c.51. Persons assessed in the last year may compound.

§ 2. The duties assessed on inhabited houses, and on windows or lights, shall be compounded for separately from all other duties; and where any such composition shall be made on the amount of the said duties, the proportion of the said additional rate shall be 1*s*. for every 20*s*. of the amount assessed, and after that rate for any greater or lesser sum than 20*s*.; and where any such composition shall be made on the amount of any other of the duties granted, (except the duties in respect of killing game,) the proportion of the said additional rate shall be 1*s*. for every 20*s*. of the amount assessed, and after that rate for any greater or less sum than 20*s*.

Compositions on the house and window duties to be made separately. An additional rate of 1*s*. for every 20*s*. on the amount of compositions.

§ 3. All persons entering into any such composition, and paying the amount of the sums compounded for at the times, and in manner herein specified, and doing all other acts, &c. required by this act, shall be entitled to make or open, and keep open during the said term, free of duty, any additional number of windows or lights in their dwelling-house, and also to keep and use, free of duty, any additional articles of the same description, (although the same may be therein charged with different and progressive rates of duty, according to the number,) as they were charged in the assessment on which the composition shall have been made; and shall be exempt from any further compliance with any of the provisions relating to the assessed taxes, and from all assessments thereon, during the said term of 3 years; except where the persons entering into such composition shall be or become chargeable with the said duties in respect of a dwelling-house not comprised in the said composition; or in respect of any articles of a different description, or chargeable with duty under some other schedule than they were charged in respect of, in the assessment on which the composition shall have been made; in which excepted cases further or increased charges shall be made, and the fines and forfeitures inflicted according to the provisions of the several acts, in relation to the said taxes in force at the passing of this act, as fully as if no such composition had been made.

Compositions to entitle the persons compounding to open additional windows, and to keep additional articles, free of duty, of the same description as those before charged. Exemption from the provisions and assessments of assessed tax acts; except when chargeable for another dwelling-house, or for articles of a different description.

§ 5. No person shall be chargeable under the acts in force after the expiration of 3 years, for any part of the increased establishment, not included in the composition entered into under this act, who shall give 6 months' previous notice of his intention to discontinue the same, and who shall actually have ceased to keep the same one calendar month prior to the expiration of the said 3 years.

Persons compounding, not to be charged for their increased establishment.

§ 6. When an establishment shall have consisted in part of articles whereon a less duty hath been made payable by any act in the present session, it shall be lawful to enter into compositions under this act, on the amount of duty charged on other articles on the said last assessment, together with the amount of duty so made chargeable by the said act of the present session.

Articles of different assessments to be compounded for on the last assessment.

§ 7. Every composition entered into under this act, in respect of the duties charged on a dwelling-house, from which the persons entering into the same shall remove during the term herein limited, shall cease on the 5th day of *April* next after such removal; and every composition in respect of any other of the duties with any

Compositions on dwelling-houses to cease at the end of the year of removal; com-

59 G.3. c.51.

persons who within the said term shall die, or become bankrupt or insolvent, or shall assign their effects, shall also cease on the 1st day of *April* next after such death, bankruptcy, insolvency, or assignment.

Compositions on other articles to cease by the death, &c. of the party compounding.

§ 8. Every composition entered into subject to the determination thereof as aforesaid shall bind the persons entering into the same, their chattels, goods, and effects, to the payment at the times and in the proportions herein specified, of the full amount of the sums made payable upon the said composition, during the continuance of the same.

Compositions to bind the party to the punctual payment of the amount.

§ 9. All persons so having compounded, and removing from the dwelling-houses in respect of which such composition shall be made, and the executors, administrators, or assignees of such persons dying or becoming bankrupt or insolvent, and the assigns of any such persons assigning their estate, chattels, goods, or effects, shall be bound to the due payment of all sums accruing or in arrear at the times of such removal, death, bankruptcy, insolvency, or assignment, or which shall be payable upon such composition for the year ending on the 5th day of *April* next after such removal, death, bankruptcy, insolvency, or assignment; and no goods belonging to any persons so having compounded, and removing, or dying or becoming bankrupt or insolvent, or assigning their estate or effects, shall be removed, nor shall any goods or chattels belonging to any persons so having compounded, be liable to be taken by virtue of any execution or other process, unless the persons so having compounded, or their executors, administrators, or assignees, or the party to whom any such assignment shall be made, or by whom such process shall be sued out, shall, before the removal of such goods, pay to the collector (the same not having been paid to the governor and directors of the bank of *England*, or the receiver-general, pursuant to this act,) all arrears then due, or which shall be payable for the year ending on the 5th day of *April* next after such removal, death, bankruptcy, insolvency, assignment, or seizure; and in case of refusal to pay the said composition, the said collectors are hereby authorised and required to distrain such goods, and proceed to the sale thereof, under the said acts, until they shall have obtained payment of the said composition money, together with the costs and charges attending such distress and sale; and every such collector shall be indemnified for so doing.

Parties removing, and the executors and assigns of persons dying, &c. to be answerable for the compositions to the end of the year.

§ 10. The monies payable by virtue of this act shall be payable without demand, quarterly, at the same times and in the same proportions, and to the same persons, as the duties of assessed taxes are now payable: provided that all persons so compounding, the amount of whose annual compositions shall not be less than 20*l.*, may contract with the commissioners for the payment of their composition money into the bank of *England*, or to the receiver-general, for the county, by half-yearly instalments; and all such half-yearly payments shall be made in equal portions on or before the 1st of *October*, and the 1st of *April* in each year; and with respect to payments to be made to the receiver-general to require a receipt acknowledging such payments, at the cost of the persons making such payments, in such form as the commissioners for the affairs of taxes shall direct; and in every such case the said receiver-general shall give the said persons a receipt as aforesaid, specifying therein the names of the persons compounding, and the parish; which receipts shall be delivered over

Composition monies payable quarterly in the same manner as the assessed taxes.

Proviso for payment of the compositions into the bank, or the receiver-general, by half-yearly payments.

Receiver-general to give receipts, to be delivered over to the collector, and by him received as cash.

to the collectors of the parish or place by indorsement under the hands of the persons so compounding, and shall be received by such collectors as cash, and allowed as such by every receiver-general. 59 G.3. c.51.

§ 11. The governors and directors of the bank of *England* shall open an account with the commissioners of H. M.'s treasury, for each year, during the term herein limited, under the title of "*The commissioners of the treasury on account of compositions of assessed taxes*," and shall carry to the credit of such account all monies authorised by this act to be paid into the bank; and the cashier who shall receive any money tendered to him in payment of not less than one moiety of the money annually payable on any composition, shall enter the same, and all such sums shall be entered under the names of the persons compounding, and the county, and parish or place mentioned in the certificate of composition; and the said cashier shall give the person paying a certificate of such payment, specifying the number of half-yearly instalments thereby discharged, and referring therein to the names of the persons so compounding, and the county and division mentioned in the certificate of composition: provided always, that it shall be lawful for any persons to pay in advance to the governor and company of the bank of *England* any sum payable for one whole year, and to require a certificate acknowledging such payments; and it shall be lawful for the cashier of the bank, on production of the certificate of composition, (all sums payable for any former year being first satisfied,) to make an allowance out of the sum so paid in advance, at the rate of 3*l*. *per cent. per annum*, and all such certificates made out by the cashier, being indorsed and delivered by the persons compounding to the collectors of the parish or place, shall be received by them as cash, and allowed to them in their accounts with the receiver-general and his deputy as aforesaid.

Bank to open an account with the commissioners of the treasury.

Cashiers to receive the compositions, and to enter same in the said account.

Persons paying the annual composition in advance to receive a discount.

3*l*. per cent. per annum.

§ 14. Limits the time of entering into compositions to 31st *October*, 1819.

§ 16. The sums payable under any composition under this act shall be raised, levied, and accounted for under the provisions of this act, and any acts in force, in relation to the duties of assessed taxes; and this act shall be construed in such manner and to the like effect as if the several provisions in the said acts, were expressly enacted in this act, except where other provisions are made under this act for paying the said several compositions, and all powers, matters, and things contained in such acts, for levying and accounting for the duties of assessed taxes, shall be observed and put in execution, as fully and effectively, as if the same were respectively re-enacted in this act.

Composition monies to be raised under the provisions of acts relating to assessed taxes.

§ 17. All persons who now are commissioners for the assessed taxes shall be commissioners for putting in execution this act; and the several assessors, collectors, clerks, surveyors, inspectors, and inspectors-general, shall respectively be assessors, collectors, clerks, surveyors, inspectors, and inspectors-general, to put in execution this act, according to the powers given to them by this act.

Commissioners acting under the assessed tax acts, to be commissioners to act in the execution of this act.

Other officers appointed under the same acts to execute this act.

§ 18. The commissioners of the treasury may allow additional salaries to the surveyors, and may discharge such incident charges and expenses as shall necessarily attend the execution of this act;

Treasury to allow additional salaries to surveyors.

59 G.3. c.51.

Receivers-general and collectors to have the like poundage as under the 48 G.3. c.55.

Clerks to have the like poundage as under the 48 G.3. c.55.

and every receiver-general and collector shall annually have the like poundage for what money they shall pay or account for, as under stat. 48 *G.* 3. *c.* 55.; and the clerk of the respective commissioners shall receive from the receiver-general the like poundage on the amount compounded for under this act as he would have been entitled to under the said act of the 48 *G.* 3.

All assessments to cease on persons compounding, except as before excepted.

Clerks to make out abstracts of composition for the collectors to collect by.

On compositions not duly paid at the times prescribed, collectors may distrain for the money in arrear, with 1*s.* in the pound for their own use, and all costs and charges.

§ 19. After the date of any certificate of composition under this act, and during the continuance of the same, all assessments under the said acts shall cease with respect to the persons so compounding, except as before excepted; and three abstracts of all certificates of composition shall within 10 days after the 1st of *October* in the present year, and in each subsequent year, within one calendar month after the 5th of *July* in such year, be prepared by the clerk to the commissioners, in such form as shall be directed by the commissioners for the affairs of taxes; and the said commissioners shall yearly set their hands to the said abstracts, and deliver one, together with warrants for collecting the same, unto the persons who shall be appointed to collect the assessed taxes for that year, and one other to the surveyor of the district, and the third to be kept by such clerk for the use of the commissioners; and in case the collectors shall not receive the sums payable on the certificates of composition, according to the said abstract, or the receipt of the receiver-general, or certificate of the cashier of the bank, acknowledging the payment, it shall be lawful for such collectors forthwith to distrain for the same, together with 1*s.* for every 20*s.* of the amount in arrear, to their own use, and all reasonable costs and charges attending the same.

Commissioners to include in their parchment duplicates of assessed taxes the amount of the composition monies.

§ 20. The commissioners shall cause the amounts of the sums to be raised by such compositions to be inserted in their annual duplicates of assessments of assessed taxes on parchment, in a column to be prepared thereon for that purpose, under the head of "Taxes compounded for."

§ 21. The monies arising by the compositions under this act shall be paid into the exchequer, and carried to the consolidated fund.

Forms of proceedings.

N. B. — The schedules contain the forms of proceedings, which, being furnished by the tax office, are unnecessary to be inserted.

1 G.4. c.73.

Certificates of compositions entered into by commissioners on or before Nov. 30. 1819, confirmed.

By stat. 1 *G.* 4. *c.* 73. intituled "*An act to extend the period allowed to persons compounding for their assessed taxes, and to give further relief in certain cases therein mentioned;*" after reciting stat. 59 *G.* 3. *c.* 51. it is enacted, that all certificates of composition which have been entered into and signed by the respective commissioners and the parties compounding, at any time after the 31st of *October*, and on or before the 30th of *November*, 1819, shall be confirmed and valid, and of the like force and effect, as if the same had been made and entered into within the time limited by stat. 59 *G.* 3. *c.* 51.; and all commissioners and others who shall have been concerned in assenting to or executing such compositions are hereby fully indemnified for so doing.

Commissioners may contract, upon offers to

§ 2. In every case wherein the commissioners have received any offer to compound after the said 31st of *October*, and on or before the said 30th of *November*, 1819, and may not have com-

pleted the contracts, it shall be lawful for the said commissioners, being satisfied that the party was entitled to compound before the day limited by the said act, to enter into composition with such persons, according to the provisions of the said act and of this act; provided the certificates shall be executed by the said commissioners and the parties compounding on or before the 31st of *December*, 1820; and which certificates, when executed, shall be of the like effect, as if the said composition had been entered into within the time by the said act limited.

1 G.4. c.73.

compound made on or before Nov. 30. 1819, provided the certificates of contracts are completed before Dec.31. 1820.

§ 3. And whereas it is expedient to extend the provisions of the said act in the cases hereinafter described: it is enacted, that where any person assessed in the year ending on the 5th of *April*, 1819, for a carriage or carriages with four wheels, shall have entered into composition for the same under the said act, or shall enter into composition for the same under this act, and not for a carriage with less than four wheels, it shall be lawful for such person to set up, keep, and use, during the period of three years, limited by stat. 59 *G.* 3. *c.* 51. any such carriage or carriages with less than four wheels, free of duty; and where any person shall in like manner have been assessed and compounded for any such carriage or carriages with less than four wheels, and not for any such carriage with four wheels, it shall be lawful for such person to set up, keep, and use, during the like period of three years, any such carriage or carriages with four wheels, free of duty; and where any person shall have been so assessed for any male servant, and shall have compounded for the same under the said act, or shall compound for the same under this act, it shall be lawful for such person, during the period of his compositions, to retain, keep, and employ any male person or number of male persons free of duty; and where any person shall have been so assessed in respect of any horse, mare, or gelding kept for the purpose of riding, or drawing any carriage chargeable with duty, and shall have compounded for the same under stat. 59 *G.* 3. *c.* 51., or shall compound for the same under this act, it shall be lawful for such person, during the period of his compositions, to keep any horse, mare, or gelding, not exceeding the height of 13 hands (*a*), and used for the purpose of riding, or drawing any carriage last aforesaid, free of duty, granted by stat. 59 *G.* 3. *c.* 51.; and where any person shall have been so assessed in respect of any greyhound chargeable with the duty of twenty shillings, or any hound, pointer, setting dog, lurcher, terrier, or other dog chargeable with the like duty of fourteen shillings, and shall have compounded for any such dog under the said first-mentioned act, or shall compound for the same under this act, it shall be lawful for such person, during the period of his composition, to keep any dog or dogs, or any number of such dogs, of any of the descriptions aforesaid, chargeable with the same duties of 20*s.* and 14*s.* or either of them, free of duty; and all persons so compounding or having compounded, and who are hereby authorised to keep or use any articles herein described free of duty, shall be freed and exonerated from all assessments under the said acts relating to assessed taxes, as fully

Persons entering into compositions for four-wheel carriages, may keep carriages with less than four wheels.

Persons compounding for carriages with less than four wheels, may keep four-wheel carriages.

Persons compounding for male servants to the higher duty, may employ those chargeable to the lower duty.

Persons compounding for horses may keep those under 13 hands chargeable under 59 G.3. c.13.;

and persons compounding for any description of dog may keep other dogs free of duty.

(*a*) *Vide* stat. 4 G. 4. c. 45. § 7. *post.*

1 G.4. c.73.

and effectually as they would have been, if the said articles had been of the same description, and included in the schedule of the said acts, with the articles on which the composition shall have been or shall be made.

Relief to effective members of volunteer corps from the duty on horses.

§ 4. All persons being respectively effective members of any volunteer corps of yeomanry, who shall have compounded for their assessed taxes under the said act, or shall be entitled to compound for the same under this act, shall, after the 5th of *April*, 1819, during the continuance of such composition, be entitled to the like exemptions, in respect of their horses used in the said corps, as they would have been entitled to in case no such composition had been entered into, and whether such composition shall include any assessed horses or not; and also, during the continuance of such composition, shall be entitled to the like privileges and immunities in respect of any additional horse or horses by them or him kept as aforesaid, as they would have been entitled to, had such composition been entered into, in respect of one or more assessed horse or horses, in the cases, and in the manner, and subject to the conditions contained in the schedule annexed to this act.

Persons compounding in England or Ireland, to have the like relief on removal from double assessment as is provided by 51 G.3. c.72. in respect to annual assessments.

§ 5. The yearly sum payable on any composition entered into in *G. B.* on removal of the person so compounding to *Ireland*, and the yearly sum payable on any composition entered into in *Ireland* on removal of the person so compounding to *G. B.*, shall respectively be deemed, received, and taken in *Ireland* and *G. B.* respectively as a yearly assessment to the amount of duty payable on servants, horses, and carriages respectively in that part of the U. K. in which such composition was entered into, and which the party might by virtue thereof keep and use.

Compositions for the whole of the taxes in one district, of persons assessed elsewhere, confirmed;

and discharges in the other districts allowed.

§ 6. Every composition entered or to be entered into by commissioners of districts, in which the amounts of taxes compounded for have been assessed wholly or in part out of the jurisdiction of the commissioners, is declared to be as valid and effectual as if the whole amount of taxes contained therein had been assessed by them; and all assessments out of the said district included in the said certificate of composition shall be discharged in the respective districts where the same were made, on the certificate of the commissioners by whom the composition was entered into; and all discharges heretofore made for the same cause are hereby declared to be valid, and all commissioners, officers, and other persons who have acted in directing or discharging the same assessments are hereby indemnified in so doing; provided that in every case of composition to be executed after the passing of this act two of the commissioners for the affairs of taxes shall, by their certificate, countersigned by their secretary, certify the same to the commissioners of the respective districts in which such composition shall be intended to be made and in which the taxes shall be assessed, and upon such certificates being transmitted to the respective commissioners, they are hereby required to enter into such composition, or to vacate and discharge such assessments.

Compositions for houses and windows and other assessed

§ 7. And whereas by the said act of the 59 *G.* 3. it is directed that the duties on inhabited houses and on windows and lights contained in the schedules marked (A) and (B), or either of them, in the acts relating to the assessed taxes, shall be compounded for

separate and distinct from all other duties, by reason that on the removal of the person compounding for the dwelling house, in respect of which the duties in the said schedules shall have been compounded for, the composition in respect of the said dwelling-house is directed to cease on the 5th of *April* next after such removal: and whereas in some cases the commissioners of certain districts have allowed persons to compound for all the said duties in one certificate, without distinguishing the said duties; it is enacted, that in all such cases it shall be lawful for any two commissioners acting for the division in which such certificate shall have been entered into, to certify by indorsement on such certificate, and also in the abstracts of such compositions, the particular duties charged in respect of such dwelling house, with the amount of the composition thereon, and to distinguish the same from the rest of the duties so compounded for, with the instalments payable on each description of duty, in like manner as if the same had been compounded for under separate certificates of composition; and the same certificates of composition shall be enforced under the powers of the said act and this act, in respect to all or any part of the instalments thereby payable; and every such certificate of composition shall be as valid and of the same force and effect in respect to the continuance of the composition for each description of duty, and enforcing the payment of the same, as if such composition had been made separate and distinct from the remainder of the said duties compounded for by such certificate.

1 G.4. c.73.

taxes in one contract confirmed; and the commissioners to distinguish the proportions of duty by indorsement on the certificate.

§ 8. Where by absence, sickness, or other reasonable cause, persons who have given notice to compound under the said recited act of 59 *G.* 3. may have been prevented from signing their contracts of composition, but have paid one or more instalments, it shall be lawful for them to sign such contracts, or by any agent to be appointed for that purpose by him in writing under his hand, duly attested and certified to the commissioners for the district; and the authority for such agent to sign the said contract shall be free of any stamp duty, and the same being delivered to the commissioners of the said last-mentioned district or their clerk, shall be sufficient authority for the agent so appointed to sign such certificate of contract; and all contracts on which any instalments shall be paid, although not signed by the party or his agent, shall be binding; and in all cases where certificates of composition shall not be signed by such parties or their agents, and any instalment shall not be paid thereon for the space of eight months after the passing of this act, such certificates of composition shall be null and void, and the commissioners in the respective districts are hereby authorised and required to restore the assessment on such persons, and to cause the same to be levied and collected, as if notices of such composition had not been given by the persons so intending to compound and neglecting to complete their compositions; and if any such composition or any portion thereof shall have been made on an assessment out of the jurisdiction of the commissioners parties to the said composition, then such commissioners shall certify the same to the commissioners for the affairs of taxes, with the amount of the taxes so contracted for, and the district of assessment; and the commissioners for the affairs of taxes are hereby required to certify the same to the commissioners of the district, who shall, on receipt thereof, cause the said

Contracts entered into but not signed, may be signed by the agent of the parties.

Contracts binding on which instalments have been paid, though not signed.

In cases where certificates are prepared but not signed by the party or his agent, and where no instalments shall be paid for eight months after passing this act, such certificate shall be void; and assessments to

1 G.4. c.73.

be restored and levied.

assessments to be restored as well for the year in which the composition was made, as for the subsequent and all future years, and collected together with the other assessed taxes.

In default of payment of instalments and of the collector to levy, a schedule of arrears to be given in.

§ 9. In default of payment of the instalments on any composition on the respective days of payment specified in the certificates of contracts, and of neglect of the respective collectors to distrain for the same under the warrant of the commissioners, it shall be lawful for any such collector, and he is hereby required, immediately upon any such default, to deliver to the commissioners acting for the district, or to the receiver-general, a schedule in writing containing the particulars of such default, with an affidavit subscribed and verified by such collector before any commissioner, that the amount of such instalment is due and unpaid to such collector or to any other person for him, to the best of his knowledge and belief; and every such schedule being certified under the hand of the receiver-general to the court of exchequer at *Westminster* shall be taken as sufficient evidence of a debt due to H. M., and shall be a sufficient authority to the barons of the said court to cause process to be issued against such defaulter named in the said schedule to levy the whole sum in arrear; and the sheriff or other officer to whom the said process shall be directed, shall without delay cause the whole sum in arrear to be levied as a debt to H. M. on record, with all costs and expences attending the same, and shall pay the monies so levied, after deducting the said costs and expences, to the said receiver-general, and shall make return of the said process to the said court.

The certificates of such schedule to be ground of process.

Rules in the schedule annexed deemed part of the act.

§ 10. The provisions and rules contained in the schedule hereunto annexed shall severally be deemed a part of this act.

The Schedule (A) to which this Act refers.

Cases of Relief to Effective Members of Corps of Yeomanry Cavalry.

First case. — Every effective member, who at the time of entering into, or giving notice to enter into composition for his assessed taxes, who shall not by reason of such service have been assessed for any horse, mare, or gelding in the year ending the 5th day of *April*, 1819, shall be entitled to the like privileges in keeping and using more or additional horses, mares, or geldings free of duty during the time he shall continue such effective member, and shall use or provide, such horse, mare, or gelding, horses, mares, or geldings, in such service, as if such member had been assessed and made composition for the same, on payment annually of one shilling for every twenty shillings of the duty so exempted.

Second case. — Every effective member, who shall keep one horse, mare, or gelding, and no more, and who hath not been assessed for any other article mentioned in the acts relating to assessed taxes (his dwelling-house excepted), may, within three calendar months after the passing of this act, enter into composition in respect of such one horse, mare, or gelding, on payment annually of the sum of three shillings computed from the 5th day of *April*, 1819, during the period of such composition, and his continuing in the said corps as such effective member.

Third case. — Every person who hath entered or shall enter into composition for his assessed taxes under the said act, or this act, and who hath afterwards or shall become an effective member of any such corps, shall be entitled to the like exemptions for any horse, mare or gelding used or provided by him, in like manner as if no such composition had been entered into by him; all which privileges, immunities, and exemptions shall be granted and allowed according to the following rules: 1 G.4. c.73.

First rule. — The amount of composition payable in pursuance of the provisions in the first of the said cases shall be ascertained and settled by two of the commissioners acting for the assessed taxes in the same district in which the composition shall have been made, and certified by them by endorsement on the certificate or contract of such composition, on the production thereof, and of the certificate of effective service, as provided by the said acts relating to the assessed taxes, and which certificate the said commissioners for their respective districts are hereby required and authorised to endorse, and sign accordingly; and the sum so charged and added to the amount of the said composition in and by such certificate, and to the abstract thereof, shall and may be levied and recovered by the same instalments and in like manner as the amount of composition inserted in the body of the said contract, and in addition thereto.

Second rule. — The amount to be charged in the second case, shall be inserted in each annual assessment for the same parish or place in which the exemption shall have been claimed, and shall be collected therewith, and levied and accounted for as in other cases of assessed taxes.

Third rule. — The commissioners in their respective districts, shall, on the production of the certificate of effective service for any one year, in the manner prescribed by the schedule marked E, in the acts relating to assessed taxes, and the certificate of contract and composition by such person or persons, by certificate under the hands of any two of the said commissioners, to be endorsed on the said last-mentioned certificate, deduct from the annual amount payable on such contract, but nevertheless for the particular year only in and for which such certificate of effective service shall have been produced, and such exemption shall have been acquired, a sum equal to the amount of duty for any such horse, mare, or gelding, in respect of which such exemptions shall have been so acquired, and discharge the amount from the abstract of composition prepared by the said commissioners, in like manner as they would have discharged the same from the annual assessment for such particular year of exemption in case such compositions had not been entered into; and in all cases where such exemptions shall have been claimed and established for and in respect of the year ending the 5th day of *April*, 1820, and the instalments on such composition shall have been paid for that year, it shall be lawful for the commissioners to certify the amount of duty so discharged by reason of the said exemption for the said year, with the cause thereof, to the commissioners for the affairs of taxes; and in that case it shall be lawful for the said commissioners to order and direct the receiver-general of the county, &c. to repay the same to the party, which order shall be an authority to

such receiver-general to make such payment, and the same shall be allowed in his accounts.

1 & 2 G.4. c.113.

By stat. 1 & 2 *G.* 4. *c.* 113. § 1. After reciting stat. 59 *G.* 3. *c.* 51. and stat. 1 *G.* 4. *c.* 73. for the relief of persons compounding for assessed taxes from an annual assessment thereon for the term of three years, commencing from the 5th day of *April*, 1819, which term will expire on the 5th day of *April*, 1822, and that divers persons have compounded for their assessed taxes in *G. B.* under the powers of the said acts; and it is expedient to relieve them, and others who have not so compounded, from an annual assessment, for a further time herein limited; it is enacted, that the assessments made under the acts in force, immediately before the passing of this act, in relation to the duties on *windows* or *lights*, and on *inhabited houses*; and the assessments made in like manner, in relation to such other of the duties of assessed taxes as may be comprised in any composition to be entered into under this act, for the year to end on the 5th day of *April*, 1822, shall remain tot he same annual amount in respect of all persons, who shall compound for the annual payment of the said assessments under this act, *for the term of six years*, in respect of the said duties on *houses*, and *windows*, and *lights*, and for the term of *five* years in respect of the other assessed taxes, to be respectively computed from the 5th day of *April*, 1822.

Assessments for the year ending 5th April, 1822, to remain to the same amount if compounded for, in respect of windows and houses for six years, and in respect of the other assessed taxes for five years.

Compositions under former acts may be renewed.

§ 2. The several compositions on the duties on *windows* or *lights* and on *inhabited houses*, may be renewed under the provisions of this act for the term of six years, to be computed from the said 5th day of *April*, 1822; and the several compositions entered into on the other duties of assessed taxes may, in respect of such of the said other duties as are herein enumerated, be renewed under this act for the term of five years, to be computed from the said 5th day of *April*, 1822, in the manner and subject to the conditions herein prescribed.

How contracts of composition are to be made.

§ 3. Every new contract of composition under this act, in respect of a *dwelling house*, shall contain in the body thereof a schedule of the number of windows or lights in the dwelling house, and the annual rent or value thereof; and every such new contract entered into, in respect of the other duties of assessed taxes, shall contain in the body thereof the number of servants, carriages, horses, and other articles of each such establishment as aforesaid; and the said contracts shall be made according to the form set forth in the schedule to this act, *mutatis mutandis*.

Enumeration of articles to be compounded for under this act.

§ 4. No composition shall be entered into or renewed under this act, for any duties of assessed taxes, other than the duties on *dwelling houses* mentioned in the schedules of stat. 48 *G.* 3. *c.* 55. marked (A. and B.); and the other duties of assessed taxes on the following articles, forming the establishments of the persons or person so compounding, and retained, employed, kept, and used for their, his, or her own use, and not for or to the use, benefit, or profit of any other person or persons, or to be lent or let to hire; viz. the duties on *servants* mentioned in the schedule of the said act, and in the schedule of stat. 52 *G.* 3. *c.* 93. marked (C.) No. 1. and No. 2.; on *carriages* mentioned in the schedules of the said acts respectively, marked (D.) No 1., No. 2., and No. 4.; on *horses, mares,* and *geldings*, mentioned in the schedules of the said acts respectively, marked (E.) No. 1., and No. 3.; and (F.)

No. 1., whether such *horses, mares,* or *geldings* are subject to the rates mentioned in the said acts, or to any reduced duty by any subsequent act or acts; on *dogs* mentioned in the schedule of the said acts, marked (G.); on persons in respect of using or wearing *hair powder,* mentioned in the schedule of the said act, passed in the 48 *G.* 3. marked (I.); and on persons in respect of using or wearing *armorial bearings* or *ensigns,* mentioned in the schedule of the said last-mentioned act, marked (K.); and every such composition which shall comprise any other duty or duties than the duties enumerated, shall be void and of no effect in respect of such other duties, and for which the party shall be subject to assessment as if no such composition had been entered into, according to the laws in force relating to such assessments.

1 & 2 G.4. c.113.

§ 5. Every person *not* having compounded under the said recited acts, who shall be duly assessed for the year ending on the 5th day of *April,* 1822, to the rates and duties chargeable under the acts relating to assessed taxes, is declared to be competent to compound for the rates and duties assessed on his dwelling house for the term of six years, and for his other assessed taxes herein enumerated, for five years respectively, to commence from the said 5th day of *April,* 1822, on the same amounts annually, as shall be assessed on him for the year ending on the said 5th day of *April,* 1822, together with an additional annual duty of 1*s.* for every 20*s.* of the respective amounts so assessed, and so after that rate for any greater or lesser sum than 20*s.*, so as not to include in the said additional duty any fraction of one penny.

Persons assessed to the duties on houses for the year ending the 5th April, 1822, may compound on the amount assessed in that year, paying an additional duty of 5*l.* per cent.

§ 6. No composition shall be entered into or renewed under this act with any person in trade, in respect of any articles kept for the purpose of trade; nor shall any composition be entered into upon any assessment charged upon two or more persons in partnership in trade; nor shall any composition under the said recited acts, with two or more partners in trade, be renewed under this act; nor upon any carriages, horses, mares, geldings, or other articles let or used for hire.

Exception as to taxes in respect of articles kept for trade, &c.

§ 7. Every person who shall have compounded for the duties on his dwelling house, and windows and lights, under the said recited acts, continuing to reside therein, is hereby declared to be competent to renew his composition under this act, for the same dwelling house, on the same amount, and under the same terms and conditions as are expressed in the contract of his former composition.

Compositions on dwelling-houses to be renewed on the same terms.

§ 8. Every person, except as hereinafter is excepted, who hath compounded under the said recited acts for any of the other duties of assessed taxes, is hereby declared to be competent to renew his former composition, as to so much thereof as relates to the duties on the articles herein enumerated, on the amount of duty charged on the same articles, and comprised in the said former compositions, together with the additional duty of 5 *per cent.* also charged therein in respect of the said articles, which several sums shall form the aggregate amount on which any such composition under this act may be renewed; and the terms and conditions of such renewal shall be a further duty of 1*s.* for every 20*s.* of the said aggregate amount, and so after that rate for any greater or lesser sum than 20*s.* so as not to include any fraction of one penny in the said further duty; and the duties on ar-

Compounders on the other assessed taxes may renew the same on the amount charged thereby, together with a further duty of 5*l.* per cent.

1 & 2 G.4. c.113.

ticles not herein enumerated nor compounded for as aforesaid, shall continue to be assessed as if this act had not been made.

Persons desirous of continuing their former compositions to deliver their contract or copy with notice before the 5th April, 1822.

§ 9. Every person who is hereby declared to be competent to renew his former composition, and shall be desirous so to do, shall, on or before the 5th of *April*, 1822, in *England*, and on or before the term of *Whitsunday* in the same year in *Scotland*, deliver to the commissioners of the district, or to the clerk of such commissioners, the contract of his former composition, or a true copy or certificate thereof, under the hands of any two of the commissioners, annexing thereto a notice according to the form in the schedule to this act, declaring his intention to renew the same; and in case the said composition shall include any articles not to be compounded for under this act, then the person so desirous of renewing his composition, shall insert in such notice a schedule of the number of articles contained in such composition as are not to be compounded for; all which, and the amount of duty thereon, shall be excluded from such renewed composition, and it shall be lawful for the said commissioners to renew the same on the enumerated articles only, according to the provisions of this act.

Persons having compounded and reduced their establishments may compound *de novo* on the assessment of 1822, on notice within three months, and a return.

§ 10. If any person having compounded under the said acts, shall have reduced his establishment since entering into such composition, whereby such person may be chargeable with a lesser amount of assessed taxes for the year commencing the 5th of *April*, 1822, than the duty compounded for, and shall by reason thereof be desirous of waving the said composition, and of entering into a composition *de novo*, it shall be lawful for him so to do, upon giving notice in writing of such his intention, to the surveyor of the duties acting for the district, within three calendar months after the passing of this act, annexing to such notice a return or list of the greatest number of articles chargeable with duty, as kept and retained or employed by such person, after the 5th of *April*, 1821, so that an assessment may be made for the year to commence from the 5th of *April*, 1822, on all the articles chargeable for that year; and it shall be lawful for the commissioners (subject to the examinations hereinafter provided for compositions with persons under this act, who shall not have compounded under the said recited acts), to enter into composition under this act, with the person giving the notices aforesaid, upon the amount of such assessment, with the additional duty granted thereon by this act, as if such persons had not compounded under the said former acts.

Persons who, since compounding, have succeeded to estates and kept larger establishments, excepted from the benefit of renewal, but may contract *de novo* on the next year's assessment.

§ 11. Nothing herein contained shall be construed to empower any person to renew his composition in manner hereinbefore mentioned, who, since the commencement of the said composition, hath come into possession of any estate real or personal, upon the death of any person, by descent, gift, or settlement, or by virtue of any devise or legacy, or under the statute for the distribution of estates of intestates, or by marriage, and hath thereupon retained any servants, carriages, horses, or other articles which may be comprised in any composition to be entered into or renewed under this act, or hath kept any servants, carriages, horses, or other articles aforesaid, of the same description, and chargeable to the like duties by the acts relating to assessed taxes, to an extent exceeding the total amount of such

composition in the sum of 25 *per cent.*, in lieu of the like articles kept by the person so dying, or any part thereof: provided that nothing herein contained shall be construed to authorise the said commissioners to contract for the renewal of any composition, under the conditions last mentioned, with any person who shall have compounded under the said recited acts on a less amount of duty than ought to have been included in such composition; but nevertheless it shall be lawful for the said commissioners in every such case, after any such person shall have made a *bonâ fide* return of the greatest number of servants, carriages, horses, and other articles of his assessed taxes, for the year to commence from the 5th of *April*, 1822, and who shall be duly assessed for that year to his assessed taxes, to contract and enter into composition *de novo* with such person on the amount assessed for that year on him, in respect of the articles herein enumerated, together with the additional duty hereby granted on the amount.

1 & 2 G. 4. c. 113.

Persons having compounded on a less amount of duty than ought to have been included, excepted from the benefit of renewal, but may contract *de novo* on the next year's assessment.

§ 12. Every person assessed to the duties on his dwelling-house, for the year ending the 5th of *April*, 1822, and who shall have opened any additional windows in the same, after the 5th of *April*, 1821, and having made such addition, who shall deliver a statement as hereinafter required, of the number of windows opened after the said 5th of *April*, 1821; also every person who shall have removed or shall remove from his dwelling-house, at any time within the year ending the 5th of *April*, 1822, and shall not be assessed for that year for the dwelling-house into which he shall have removed, but who shall deliver a statement of the number of windows in such dwelling-house, and the rent or annual value thereof, is hereby declared to be competent to compound for the said rates and duties on the amount chargeable on such dwelling-house by such assessment as shall be made thereon, for the year commencing the 5th of *April*, 1822.

Persons assessed to the duties on houses and increasing the number of windows in the same; also, persons removing into a dwelling-house in that year may severally compound on the assessment for the succeeding year.

§ 13. Every person who shall have begun to keep, use, or employ any servants, carriages, horses, or other articles before enumerated, or any additional number thereof, in the year ending on the said 5th of *April*, 1822, and who shall deliver a statement as hereinafter required, of the number, so that an assessment may be duly made thereon for the year to commence from the 5th of *April*, 1822, is hereby declared to be competent to compound under this act, on the amount charged by such assessment, on the same terms and conditions as if the said person had been so assessed for the preceding year.

Persons beginning to keep, or increasing an establishment in 1821, may compound on the assessment of the succeeding year.

§ 14. Nothing in this act contained shall be construed to extend any composition under the same, to any part of any increased establishment set up by any person who hath compounded under the said acts, which shall, in pursuance of the act of the 59 *G.* 3. *c.* 57., or any other act, be discontinued and cease to be kept in the manner provided by the said act, and which would not have been assessable on the said person on the year to commence after the 5th of *April*, 1822.

To provide for the exclusion of articles discontinued and ceased to be kept.

§ 15. Nothing in this act shall be construed to extend any renewed composition under the same to any articles of a different description than is authorised by the composition entered into under the recited acts, which shall have been set up or kept since the making of the said composition, but every such person shall be assessed for the said articles, as if the said

Renewed composition not to extend to articles of a different description than autho-

1 & 2 G.4. c.113.

rised by former composition.

former composition had not been renewed; but nevertheless it shall be lawful for any such person who shall have been assessed for the said additional articles for the year ending the 5th of *April*, 1822, or shall be assessed for the same for the subsequent year, and who shall renew his former composition, also to compound for the said additional articles, on the amount of such assessment, and the additional rate granted by this act, by entering into a separate contract for the said articles so assessed.

Composition may be made for articles not in former composition.

§ 16. Every person who shall have compounded under the said recited acts for the articles of his establishment, and shall have removed from the division where the former composition was entered into, and who shall be desirous to renew his composition, under this act, in respect of the same establishment, shall deliver to the commissioners of the division where he shall reside, the contract of his former composition, or a true copy or certificate thereof, under the hands of two of the commissioners, annexing thereto a notice according to the form in the schedule to this act, declaring his intention to renew the same; and it shall then be lawful for the said commissioners to renew the same, according to this act, in like manner as if the former composition had been entered into by the commissioners of the division where the same is intended to be renewed.

Compounders having removed to another division of commissioners, may compound therein.

§ 17. Every person entering into any composition according to this act, and paying the amount of the sums compounded for at the times and in the proportions specified in the said acts and in this act, and performing all other acts required by the said recited acts and this act, shall be entitled to the like privileges of opening or keeping open, free of duty, after the 5th of *April*, 1822, any additional number of windows in the dwelling-house comprised in his contract of composition, or of setting up and keeping, after the said 5th of *April*, 1822, any additional articles, composing his establishment, for his own use, but not otherwise, as the persons compounding under the said recited acts are or were entitled to according to the provisions of the said acts, and not otherwise provided by this act; and shall be exempt from all assessments on such additional windows and such additional articles of his establishment, during the terms mentioned in such composition: provided always, that no person who shall compound under this act for the duties on any carriages with two wheels, and not on any carriage with four wheels, shall be entitled to set up, keep, or use any carriage with four wheels free of duty: provided also, that no person who shall compound for any dogs other than hounds, shall set up or keep free of duty any hound or hounds; nor shall any person who shall compound for any less number of hounds than ten, set up or keep free of duty any additional number of hounds: provided also, that the privileges and immunities in this clause mentioned, shall not extend to any dwelling-house not comprised in the said composition, nor to any articles of such establishment, specially excluded by this act from composition, in which excepted cases, further charges shall be made, and the fines, penalties, and forfeitures, incurred under any of the said acts relating to assessed taxes, shall and may be recovered according to the said acts, as if no such composition had been made under this act.

Compounders entitled to the like privileges of opening windows, encreasing establishment, &c. as under former acts.

Exceptions.

Carriages.

Dogs.

§ 18. The compositions to be entered into under this act for the duties on windows or lights, or on inhabited houses, although entered in the same contract, shall be deemed to be separate contracts from the compositions entered into in respect of the duties on servants, carriages, horses, or other articles compounded for; and every such composition for windows or lights, or as an inhabited house, shall be entered into with the commissioners acting for the parish where such house shall be situate, and not elsewhere; and every such composition, in respect of the servants, carriages, horses, or other chargeable articles, forming the establishment of the same persons in any part of *England*, shall be entered into with the same commissioners and in one contract; provided that every person assessed for any servants, carriages, horses, or other chargeable articles for the year ending the 5th of *April*, 1822, in two or more places, or who shall be assessed for that year, or shall have compounded under the acts, in a different place than where he be entitled to compound under this act, shall deliver to the commissioners to whom such application to compound shall be made, a certificate under the hands of the surveyors of the districts, where he shall be so assessed or have compounded under the said acts, containing the particulars of such assessment or composition in every such other division or place, according to such forms as shall be devised by the commissioners for the affairs of taxes; and every composition entered into or renewed contrary to the provisions before mentioned, shall be vacated and of no effect by the judgment of the commissioners for the affairs of taxes, as to compositions made in *England*, and of the barons of the exchequer in *Scotland*, as to compositions in *Scotland*, on proof before them by like certificate of such assessment for the said year, or of any composition under the said acts which shall not have been certified to the commissioners, parties to such composition, nor comprised therein, unless it shall be proved to their satisfaction, that the same has arisen by error or mistake; in which cases the said barons and commissioners for the affairs of taxes, may consent that a new composition shall be entered into, to take effect from the 5th of *April*, 1822: provided always, that nothing herein contained shall be construed to preclude any person from compounding for the duties on their dwelling-house, without compounding for his other assessed taxes, and *vice versâ*.

1 & 2 G.4. c.113.

Compositions on houses and on the other assessed taxes although in the same contract, to be deemed distinct compositions.

Compositions on the other assessed taxes to include the whole assessed.

Persons assessed in two or more places to deliver certificates of the amount; also those who have compounded in a different division than where they are entitled to renew.

Compositions on houses may be compounded for without including the other taxes, and *vice versâ*.

§ 19. Every person compounding as aforesaid under this act, shall be discharged from any penalties imposed on persons for non-performance of any matter required by the acts to be done by persons chargeable to the duties, during the term herein limited, except that every such person who in his returns, under the acts relating to assessed taxes, shall conceal any servant, carriage, horse, or other article herein enumerated, whereby he shall have escaped assessment for the year ending the 5th of *April*, 1822, or who in his statements, to be delivered under this act, shall conceal any such article, so that he shall not have caused the same to be comprized in his composition under this act, shall be liable to the like penalty as if such person had not compounded, and had continued liable to assessment under the said acts.

Compounders not liable to penalty of assessed tax acts, except penalty for concealment to evade assessment of any duty for the year ending 5th April, 1822, or other concealment to evade the amount of composition.

1 & 2 G. 4. c. 113.

Persons occupying houses or keeping articles compounded for by other persons or set up by other persons under colour of the composition, to be liable to duty.

§ 20. If any person who shall not compound under this act, shall, after the 5th of *April*, 1822, occupy any dwelling-house, or keep for his own use any article chargeable with duty, which hath been compounded for by any other person, or which hath been kept by such other person, under his composition, or under colour or pretence thereof, the same dwelling-house or other article, continuing to belong to the person so compounding, and which hath not been compounded for by the person so occupying the said dwelling-house or keeping the said article, nor under his composition; every such person so occupying any dwelling-house, or keeping for his own use any such article, shall be liable to an assessment in respect of the said dwelling-house, during the time of his occupation thereof, and also in respect of any such article, in like manner as if the same dwelling-house or article had belonged to him, and as if no composition had been made by such other person; and on due proof before the commissioners that the same hath been done with intent to defraud the revenue, every such person shall be assessed in treble the amount of duty.

Intent to defraud, treble the amount of duty.

Persons procuring a contract to be entered into to a less amount than ought to be included, the contract to be void, and the offender to forfeit 50*l.*

§ 21. If any person shall by fraud or covin cause the assessment on which any contract of composition shall be entered into under this act, to be made on a lesser amount of duty than ought to be charged on him, or by any the means in this act mentioned, shall cause any contract of composition under this act to be entered into, or any contract of composition entered into under the said recited acts to be renewed under this act, on a lesser amount of duty than ought to be included in the contract of composition under this act, every contract so entered into or renewed under this act shall be void; and every person so offending shall forfeit the sum of 50*l.*, to be recovered and applied as any penalty contained in the said acts.

Persons having diminished their establishment during their residence out of G. B., or residing out of G. B., not entitled to compound.

§ 22. No composition for assessed taxes, shall be entered into or renewed under this act, with any person who shall have resided out of *G. B.* before the passing of this act, for a temporary purpose only, and who shall have ceased to be assessed to the said duties, or shall have been assessed to a lesser amount during such his residence out of *G. B.*, and who shall be assessed to the said duties on a lesser amount than he was assessed before his departure from *G. B.*, for the year ending the 5th of *April*, 1822, nor with any person who shall be out of *G. B.* at the time of executing this act.

In cases of sickness, &c. persons may sign their contracts in the presence of the collector of the parish, and persons residing in Ireland may execute the contract by attorney.

§ 23. Any person residing within *G. B.*, may, in cases of sickness or infirmity, or other reasonable cause, with the consent of the commissioners, execute such contract in the presence of the collectors of assessed taxes, or one of them: provided also, that every such collector shall testify the execution of such contract, by signing the same in the presence of the party contracting: provided also, that any person duly assessed for the year ending the 5th of *April*, 1822, and entitled to compound under this act, but residing in *Ireland*, may execute such contract by his attorney duly constituted, the said power of attorney being first delivered to the commissioners for that purpose.

Compositions with persons afterwards suc-

§ 24. Every composition entered into under this act, in respect of servants, carriages, horses, or other articles before enumerated, with any person hereinafter described, shall cease

at the times herein-after mentioned; (that is to say), if any person who shall compound under this act, shall afterwards come into possession of any estate, real or personal, or become entitled to the rents or profits of any estate, real or personal, upon the death of any person, whether by descent, gift, or settlement, or by virtue of any devise or legacy, or under the statute for the distribution of estates of intestates, and shall thereupon retain any servants, carriages, horses, or other articles, forming the establishment of the person so dying, or shall keep any other servants, carriages, horses, or other articles of the same description, and chargeable to the like duties by the acts relating to assessed taxes, in lieu of the like articles kept by the person so dying, or who at any time after he shall come into the possession of or be entitled unto the rents or profits of any such estate by the means aforesaid, and during the term herein limited for the continuance of such compositions as last aforesaid, begin to keep any greater number of servants, &c. than hath been compounded for by him, the duties on which increased number, according to the acts, amount unto one-fourth part of the amount of duty so compounded for, then the compositions entered into under this act shall cease at the end of the year of assessment; also, if any person shall intermarry after entering into any composition under this act, and entered into by both or either of them, and the husband shall by such marriage come into the possession, or to the use or enjoyment of the rents or profits of any estate, real or personal, belonging to his wife before marriage, whether upon such marriage the husband shall acquire any interest in law or equity in such estate or not, or whether the said estate shall remain in or be vested to the sole use of the wife or not, in case the husband shall upon such marriage retain or keep any servants, carriages, horses, or other articles kept by his wife before marriage, or in case the wife shall after marriage retain her former establishment, or any part thereof, or in case the husband or wife shall upon such marriage begin to keep any other servants, carriages, horses, or other articles chargeable to the duties, in lieu of the establishment of the wife before marriage, or so that the separate establishment of either husband or wife, or their joint establishment, would have been assessable on the husband if no composition had been entered into to an amount of duty exceeding one-fourth part of such composition, then the composition entered into under this act by such persons shall cease at the end of the year of assessment; but nevertheless it shall be lawful for the commissioners in every such case, after such person shall have made a *bonâ fide* return of the greatest number of his or her establishment charged with duty for the year next after the determination of such composition, in order to an assessment thereon for that year, and who shall be duly assessed for that year to his or her assessed taxes, to contract and enter into composition *de novo* with any such person for the remainder of the term then to come on the amount so assessed for that year, together with the additional duty hereby granted.

1 & 2 G.4. c.113.

ceeding to estates and keeping larger establishments, to the extent of one-fourth part on the amount compounded for, to cease, with power to compound on the amount of the next assessment for the remainder of the term.

§ 25. The several persons who for the time being shall be commissioners for putting in execution the acts relating to assessed taxes, shall be commissioners for putting in execution this act; and the several assessors, collectors, surveyors, inspec-

Commissioners and other officers acting under the former composition

1 & 2 G.4. c. 113.

acts, to act in like manner in the execution of this act.

tors, and inspectors-general for the time being, appointed to put in execution the said acts, shall respectively be assessors, collectors, surveyors, inspectors, and inspectors-general to put in execution this act; and the commissioners and persons authorised by the said acts, to contract for such compositions, or do any other matter, shall severally contract for the compositions to be entered into under this act, and do all matters required to be done in the execution of this act, within the limits of their jurisdictions; and all the powers given to them by the said acts, shall be revived and continued for the terms herein limited, in as ample manner as if the same powers were expressly re-enacted by this act; and the said commissioners and others before-mentioned, are required to do all things necessary for putting this act in execution, in like manner as they are authorised to put in execution the said acts.

Provisions of former composition acts to remain in force.

§ 26. All the provisions contained in the said recited acts, although expressly applied to the compositions made under the said acts, shall respectively apply to the compositions under this act, and (except where other provisions are substituted by this act), shall respectively be used in ascertaining the amount on which any composition is to be made, and the additional rate to be imposed thereon, and in doing all other matters necessary for carrying this act into execution, and shall be deemed as part thereof, in like manner as if the same were severally repeated in this act; and where other provisions are substituted by this act, in lieu of any provisions in the said acts, the same shall be construed in such manner, and to the like effect, as if the said acts and this act had been incorporated, and as if this act had expressly abrogated and made void the parts of the said acts, in lieu whereof any parts of this act are substituted.

Limitation of time for executing the powers of former acts extended to the periods of this act.

§ 27. Where the said acts contain any limitation of time for the doing of any act, the powers of the said acts shall be used for the doing the like acts, required by this act, observing the limitation of time expressed in this act.

Persons intending to compound to give notice thereof, together with a statement of the articles of composition in the form of the schedule annexed.

§ 28. Every person who is hereby declared to be competent to compound under this act, and shall be desirous so to do, shall, on or before the 5th of *April*, 1822, in *England*, and on or before the term of *Whitsunday* in the same year in *Scotland*, deliver, free of charge, to the surveyor of the districts acting for the parishes where such persons shall reside, a notice in writing according to the form in the schedule to this act, declaring his intention to take the benefit of this act, which notice shall be signed and bear date on the day of such signature by such person (or by some authorised agent on his behalf, residing in such district, and declaring therein the place of his residence) in the presence of one of the assessors or collectors, or in the presence of such surveyor, who shall attest such signature by signing the same; and every such notice shall contain the number and description of the articles on which such persons shall intend to compound, which notices shall be in the form of the schedule; and all such notices shall be retained in the hands of the said surveyor, until the expiration of two calendar months after delivery thereof;

Surveyor to certify to the commissioners his satisfaction with the notice or

and every such surveyor shall carefully examine each assessment, and each contract of composition entered into under the said acts, relating to the person so applying, and also the notice delivered by the said person, under the said acts, to discontinue any in-

creased establishment set up under such contract, or any part thereof, and after such examination thereof, such surveyor shall, within the said two calendar months, deliver the same to and therewith certify to the commissioners, either his satisfaction with the notices delivered, or his objection thereto, together with the particular articles omitted, and the amount of duty on which such composition ought to be made; and no composition shall be entered into in any of the cases so objected to, until a full return shall be made of all the articles chargeable with duty, on which the composition ought to be made under this act; and every composition entered into contrary to the provisions of this act, shall be void, and the person entering into the same shall be liable to assessment as if no composition had been entered into, and to the charge of the surveyors, to be made under the authority of the said acts.

1 & 2 G.4. c.113.

his objection thereto.

Compositions entered into contrary to this act void.

§ 29. In every case where, by any error or mistake, the just amount of duty on which the person compounding ought to compound, or the additional rate thereon shall not be duly inserted or calculated in the contract of composition, it shall be lawful for the commissioners for the affairs of taxes, and the said Barons, by certificate under the hands of any two of them, directed to the commissioners of the division, to cause the same to be amended, or a new contract executed, to obviate such error or mistake; and the commissioners to whom such certificate shall be directed, shall cause the same to be amended accordingly.

Errors or mistakes in compositions may be amended.

§ 30. From and after the passing of this act, the commissioners of assessed taxes, and of the acts relating to compositions for the same, shall cause the amounts of the duties compounded for, and the additional duty charged by this act, in each parish, to be inserted in their annual duplicates of assessments, on parchment, in such form as the commissioners for the affairs of taxes shall devise, in like manner as if the same amounts had been severally charged by assessment, and shall place the amounts payable in each parish opposite the names of the collectors, that the collectors in each parish may be answerable for the same amounts as if the same had been to be raised by assessment.

Commissioners to insert the amounts of duties in the compositions in their annual duplicates of assessed taxes.

§ 31. The monies payable by virtue of the compositions under this act, shall be payable to the collectors of the parishes, at or before such times expressed in such contracts; and all the powers and provisions in the acts relating to assessed taxes shall be used for the raising, levying, paying, and accounting for the monies, as if the same had continued in the assessment; and the persons assessed, or who shall compound in each such parish, shall be answerable for the default of the collectors of each parish, rateably and in proportion to the amount of their compositions, and the remainder of the assessments for such parish.

Composition monies to be paid to collectors under the provisions of the acts relating to assessed taxes.

§ 32. The like schedules as are required by the said acts relating to assessed taxes, in default of payment of the monies arising by assessment, shall be delivered of persons making default in the payment of monies to arise by compositions, which last-mentioned schedules shall in all cases be delivered to the receivers-general, or their deputies, on their next receipt after each day of payment, with an affidavit subscribed, to be made on the oath or affirmation of the said collector, that the sums contained in the said schedule have deen demanded from, and are due from the persons charged

Schedules of defaulters to be delivered to receivers-general at each half-yearly receipt.

1 & 2 G. 4. c. 113.

therewith, either to such collector, or to any other person for such collector, to the best of his knowledge and belief, which oath the receivers-general, or their deputies, are to administer and subscribe; and it shall be lawful for the receivers-general, or their deputies, forthwith to certify the same to the court of exchequer at *Westminster*, in order that process may thereupon be issued against such defaulter.

Collectors in default for non-delivery of schedules to be certified in like manner.

§ 33. In default of any such schedule being delivered to any receiver-general, or his deputy, at his receipts, or within three days thereafter, every such receiver-general, or his deputy, at the same time that he shall certify the default of the collectors, shall, in the same certificate, certify also to the said court of exchequer, the amount of the monies to arise by the said compositions and remaining unpaid, to the best of his knowledge and belief, and the particular parish where such failure hath happened, together with the names of the collectors.

Every such certificate to be an authority to issue process for the levy of issues.

§ 34. From and after the passing of this act, every certificate under the hand of any receiver-general, or his deputy, of any default of any collector of the assessed taxes, or of the monies arising from compositions for non-delivery of a schedule, shall be a sufficient authority to the Barons, or any one of them, to cause immediate process to be issued out of the office of the king's remembrancer, against the said collectors; upon which writ the sheriff shall levy issues after the rate of 1*s.* for every 20*s.* of the sums so unpaid or unaccounted for by the said certificate, and shall pay the monies so levied, after deducting the costs, to be settled by the commissioners for the affairs of taxes, to the receiver-general or his deputy; and the sheriff shall make immediate return of the said process to the court according to the due course thereof: Provided always, that it shall be lawful for the commissioners of taxes, or any two of them, after payment of the duties in arrear, to cause such issues, or such part thereof as they shall think reasonable, and whenever they shall be satisfied that the default so certified was not wilful, to be remitted and paid to the collector on whom the same was levied, after deducting thereout the costs attending such process and levy, to be settled by the said commissioners.

After payment of arrears commissioners for affairs of taxes may remit such issues.

Sheriffs and others having in their hands penalties or issues levied, or who shall receive the same under this act, to pay the same over to the receiver-general.

§ 35. All the monies arising from fines, penalties, issues, and forfeitures, or shares thereof recovered, under the said acts relating to the duties of assessed taxes, or under the said recited acts relating to compositions, or which, after the passing of this act, shall be recovered under the said acts or this act, shall be paid by all sheriffs, under sheriffs, or other the persons having received the same into the hands of the receiver-general for the county, within ten days after they shall receive any order for that purpose under the hands of two of the commissioners for the affairs of taxes, or to such other receiver-general to be named in such order as the said commissioners shall direct.

The monies arising by compositions to be paid into the consolidated fund.

§ 36. All the monies arising by compositions (the necessary charges of raising and accounting for the same excepted) shall be paid into the exchequer at *Westminster*, to the account of assessed taxes, and carried to the consolidated fund of the U. K. of *G. B.* and *Ireland*.

Butchers not deprived of

§ 37. And whereas by stat. 59 *G.* 3. *c.* 13. certain duties, as therein mentioned, are directed to be charged and paid on butchers'

horses: and whereas doubts have arisen as to the true intent and meaning of the act, touching certain exemptions granted previous to the passing thereof; it is enacted, that from and after the 5th day of *April*, 1822, nothing in the said acts shall extend to deprive any butcher of any exemption for or on account of one horse to be used by him or his servants solely for the purposes of trade, to which exemption such butcher would have been entitled under any act relating to assessed taxes, in force previous to the passing of the said act.

1 & 2 G.4. c.113.

exemption of duty for one horse used for the purposes of trade, to which they were entitled by former acts.

§ 38. It shall be lawful for the commissioners of H. M's treasury of the U. K. of *G. B.* and *Ireland*, or any three of them, to order and direct the commissioners of inland excise and taxes in *Ireland*, or any three of them, to make contracts with any persons in *Ireland*, who shall have made or entered into any composition for the term of three years from the 6th of *January*, 1820, under and by virtue of the said recited act, for the rates, duties, and taxes on dwelling-houses, in respect of the fire hearths and of the windows therein, and in the outhouses, appertaining thereto, and on male servants and on horses, mares, and geldings, and on carriages, race horses, and dogs; so that such compositions may be continued for any further term not exceeding six years from the 6th of *January*, 1823; and in like manner to make contracts and agreements for any term not exceeding seven years, from the 6th of *January*, 1822, with any person or persons who shall be assessed for the year ending on the 5th of *January*, 1822.

Treasury may direct that the provisions of act for relief of persons in *Ireland* compounding for assessed taxes be extended for further periods, as herein mentioned.

§ 39. The schedule hereunto annexed shall be deemed a part of this act: Provided always, that it shall be lawful for the commissioners of this act to use the said form as well where the composition shall comprize all the duties therein mentioned, or a part or parts thereof, only striking out all such part or parts as may not relate to the duties not intended to be included therein.

Schedule annexed to be deemed part of this act.

How form shall be used.

The schedule to which this act refers, contains (*a*):

I. *Notice to be used by Persons desirous of compounding for their assessed Taxes.*

II. *Notice to be used by Persons desirous of renewing their former Composition.*

III. *Notice to be used by Persons entitled to compound on a lesser Establishment than is comprised in their former Composition.*

Form of renewed Contract of Composition for assessed Taxes.

Form of Con'ract of Compositions under the Act of the *2 *G.* 4*th.*

* *Sic.*

By stat. 3 *G.* 4. *c.* 50. § 1. after reciting stat. 1 & 2 G. 4. *c.* 113. § 1. 5. 9, it is enacted, that in every case wherein the respective surveyors acting in the execution of the said stat. 1 & 2 *G.* 4. *c.* 113. shall, after the 5th day of *April*, 1822, and before the passing of this act, have received, and in every case wherein the said respective surveyors, from and after the passing of this act and before the 1st of *September*, 1822, shall receive any notice or offer to

3 G.4. c.50. The time for executing the contracts enlarged.

(*a*) N.B. — Printed forms, according to this schedule, being delivered to the parties by the assessors or collectors, with the usual notice papers, it has been deemed unnecessary to insert them in this work. — *Ed.*

3 G. 4. c. 50. compound or to continue any former composition authorised by the said act, except as hereinafter is excepted, it shall be lawful for the said respective surveyors diligently to inquire into and examine such notices, and to certify their assent thereto, at any time within thirty days after the delivery thereof respectively; and it shall be lawful for the respective commissioners acting in the execution of the said act, and they are hereby authorised and required to enter into composition with such person or persons respectively, subject to the rules and regulations, and according to the provisions of the said act and of this act, to all intents and purposes, as if the said notices had been delivered within the time limited by the said first mentioned act; provided the certificates of such compositions respectively shall be executed by the said commissioners, and the party so compounding, on or before the 5th day of *October*, 1822; and provided that the compositions authorised to be entered into under this act shall not extend to any case mentioned in the said act, other than to renewed compositions, and such compositions as are authorised to be made on the amount of assessments mentioned in the said act, except where otherwise varied by the provisions of this act; and which certificates of compositions, when executed by the said commissioners, or any two or more of them, and by the party aforesaid, in the manner by the said act directed, shall be of the like force and effect, and subject to the like powers and conditions for payment, to all intents, as if the said compostitions had been entered into under the directions of the said act.

Persons renewing their compositions exempted from the additional duty, where they have not increased their establishment during the period of their former compositions.

§ 2. If any persons who have given, or who shall give notice of renewing their former compositions, shall not have increased their establishment since entering into such first composition, it shall be lawful for them to claim the exemption from the said additional duty granted by the said act, upon giving notice in writing of such their intention to the surveyor acting for the district in which such persons shall reside, according to the form in the schedule to this act annexed, on or before the 1st day of *September*, 1822.

Commissioners may contract in such cases, exclusive of the additional duty.

Claims for relief from additional duty, may, when allowed, be endorsed by certificate on any contract previously executed.

§ 3. In all claims to be allowed by the commissioners, in the cases herein provided, it shall be lawful for the said commissioners, and they are hereby authorised, to contract with the said persons, under the said recited act, for a renewal of their composition, exclusive of the said additional duty by the said act granted; and where any claim shall be allowed under this act, upon any contract entered into before the passing thereof, it shall be lawful for any two of the said commissioners, and they are hereby required, to certify under their hands every such allowance on the back of such contract, without erasing the said additional duty from the body thereof; and all such contracts so endorsed shall be as valid and effectual for enforcing the same to the amount of the reduced consideration and instalments by virtue of such endorsement, as if the said contracts had been originally entered into without including therein the said additional duty.

§ 4. And whereas by stat. 56 G. 3. c. 66., relief was granted to the occupiers of farms at less than 200*l.* *per annum*, from the former duties on horses used for the purposes of husbandry, and in lieu of which duties certain reduced duties were substituted for the period therein limited; and it was therein provided, that any person chargeable to the said reduced duties should, during the continuance of the said act, be exempted from the duties payable

under the said several acts, in respect of one such horse, mare, or gelding used occasionally for the purposes of riding thereon: And whereas the provisions of the said act were extended by subsequent acts, and by stat. 1 & 2 *G.* 4. *c.* 110. the duties on husbandry horses granted by the said former acts were wholly repealed, but the said exemption was not extended beyond the period of continuance of the said reduced duties: And whereas it is expedient to continue the said exemption, for the same term mentioned in the said act for the continuance of the said reduced duties; it is enacted, that from and after the 5th of *April*, 1822, for the term of five years then next following, any person occupying a farm as tenant at rack rent, the rent of which shall be less than 200*l.* a year, and making a livelihood solely thereby, or any person occupying any estate on any other tenure than as tenant at rack rent solely on such estate, together with a farm at rack rent, the value of which in the whole shall be less than equivalent to a farm at the rack rent of 200*l.* a year (reckoning the value of every estate occupied by the owner thereof, or on any tenure other than as tenant at rack rent, as equivalent to double the amount of the like farm at rack rent), and making a livelihood solely by such his own estate, or by such estate and farm jointly, shall be exempt from the duty payable under the said acts for one horse, mare, or gelding *bonâ fide* kept and usually employed for the purpose of husbandry on his said estate or farm, although used occasionally for the purpose of riding; such being claimed and allowed in like manner as is directed by the acts relating to assessed taxes, in other cases of exemption from the said duty.

3 G. 4. c. 50.

Exemption for farmers occasionally riding a husbandry horse.

§ 5. After the said 5th day of *April*, 1822, any persons occupying a farm of less value than 200*l.* *per annum*, in the cases of exemptions last herein-before described, and making a livelihood solely thereby, and from the profits of letting and use herein-after mentioned, shall be exempt from the duty chargeable by the said recited acts, in respect of any horses, mares, or geldings *bonâ fide* kept for the occupation of his, her, or their farm, although any such horses, mares, or geldings shall be occasionally let to hire, or used in drawing for hire or profit, by such person or persons, for any other purposes than of drawing any carriage chargeable with duty in respect of such horses or carriages, or of letting the same to hire.

Exemptions for farmers letting their husbandry horses to hire, or drawing for hire or profit.

§ 6. And whereas persons removing from their dwelling-houses within the year ending the 5th of *April*, 1822, and occupying other dwelling-houses to which they have not been assessed for that year, are required to deliver statements of the number of windows, and the value of the said dwelling-houses, at which the same were chargeable, in order to an assessment for the year commencing the 5th of *April*, 1822, on the amount whereof the persons therein described are respectively authorised to compound: And whereas doubts have arisen as to the time at which such statements were intended by the said act to be delivered, and the windows to be comprized therein; it is declared and enacted, that the windows to be returned in each statement shall be the same number on which an assessment hath been made, if the same had been then occupied for the year ending on the 5th of *April*, 1822, and in all cases where any statement hath been delivered before the passing of this act, containing a less number of

Statements required under the former act to authorise compositions on assessments to the house and window duty for 1822, in cases of removal, to contain the number of windows chargeable for 1821.

3 G.4. c.50. windows than were chargeable on the dwelling-house mentioned therein on the 6th of *April*, 1821, a new statement shall be delivered within two calendar months after the passing of this act, conformable to the declaration and enactment before mentioned, and it shall be lawful for any persons before described, whether such statements have been before delivered or not, to deliver such statements within the said period; and all contracts of composition made or to be made contrary to this act, shall be void; provided, that the commissioners who may have already executed any contract of composition upon statements delivered contrary to this act, may amend the same without executing new contracts, by endorsing thereon the number of additional windows, duty, and per-centage, on every such contract.

Persons authorised to compound may include stewards, bailiffs, &c. and occasional servants employed in taxable capacities.

§ 7. It shall be lawful for every person competent to renew his composition, or to compound under the said recited act or this act, to include in such composition renewed or entered into respectively, the duty in respect of any clerk, or of any steward, bailiff, overseer, or manager, or of any male person described in the schedule of stat. *52 G.3.* (C.) No. 3., such male person being occasionally employed in any of the capacities enumerated in the schedule to the said act marked (C.) No. I., as in the said schedule No. 3. is described: Provided that the composition of any such person so renewing his former composition, or compounding, shall contain the duty for one such servant chargeable in the said schedule marked (C.) No. 1.; and it shall be lawful for the commissioners to include such articles herein allowed, or any of them, in such composition on the same terms as if the said articles had been originally allowed to be compounded for by the said act; and in cases where contracts shall have been entered into before the passing of this act, it shall be lawful for the commissioners to amend the same, by causing the amount of composition for any of the articles aforesaid to be certified by endorsement on such contract, under the hands of any two of such commissioners; and the sum so charged and added to the said composition, shall be levied and recovered by the same instalments, and in like manner, as the amount of composition inserted in the body of such contract, and in addition thereto.

For discontinuance of composition with persons employed abroad in the public service.

§ 8. If any person, during the continuance of his composition, shall by reason of any employment in the public service in the execution of any office, military, naval, or civil, be required to reside out of the U. K., and such person shall give notice thereof to the surveyor of the district, every such composition shall cease and determine on the 5th of *April* next after such notice and the time of such absence and removal from the said U. K., on payment of all arrears due on such contract up to the said 5th of *April* last-mentioned; and the commissioners for the affairs of taxes shall cause the discontinuance of such contract to be certified to the commissioners of the district: Provided, that nothing herein contained shall exempt any such person from his liability to assessment for any year in respect of any part of his establishment continued to be kept and employed in the said U. K. for any part of his family, or from his liability to assessment under the said acts, from and after the 5th of *April* next following the discontinuance of such employment in the public service, and his returning to and residing in the U.K.

§ 9. The several commissioners acting in the execution of the said act, shall be commissioners for putting in execution this act.

3 G.4. c.50. Commissioners and other officers appointed to execute the former acts, to execute this act.

The schedule to which this act refers, contains the form of notice to be used by persons not having increased their establishment under former compositions, and claiming, on renewal, exemption from the additional duty of five pounds *per centum*, which may be had from the assessor.

By stat. 4 *G.* 4. *c.* 11. intituled "*An act for repealing certain duties of assessed taxes; for reducing certain other of the said duties, and for relieving persons who have compounded for the same,*" § 3. after reciting, that whereas by virtue of two stats. one passed in the first and second, and the other in the third year of the reign of his present majesty, divers persons have compounded for their assessed taxes in *G. B.*, under contracts of composition, which were made to continue in force on the said duties of windows or lights and on inhabited houses for the term of six years, and on the other duties of assessed taxes allowed to be compounded for under the said acts for the term of five years respectively from the 5th day of *April*, 1822; and it is expedient to relieve the persons who have so compounded in respect of the said duties, as well those wholly as those in part repealed, as of the additional duties payable under the said acts on the amount of the duties compounded for, which are so wholly or in part repealed, upon all instalments payable on contracts after the period herein mentioned; be it further enacted, that it shall and may be lawful for the respective commissioners acting in the execution of the said acts and of this act, in their respective districts, and they are hereby authorized and required, to remit and deduct so much and such parts of the duties compounded for and included in any such contract as are repealed by this act, and also so much of the additional duty granted by the said acts, and payable by any such contract on the amount of any duty, or any portion of the duties so repealed, and to cause such reduced amounts to be inserted in the assessments of composition, and in the several duplicates thereof, to be delivered and returned by the said commissioners under the said acts in their respective districts, after the said 5th day of *April*, 1823, and during the periods of such respective compositions; and every such contract shall be of the same force and effect for the recovery and enforcing payment of the reduced instalments under the provisions of the said acts, and of this act, to commence from the 5th day of *April*, 1823, to all intents as if the full amount of the instalments compounded for continued payable on such contracts.

4 G.4. c.11. Commissioners of districts to deduct so much of the duties compounded for as are repealed by this act, and to cause the reduced amount to be inserted in the assessments of composition.

Contracts to be in force for recovering payment of reduced instalments.

§ 6. In case any person who, having compounded under the said recited acts in respect of a carriage with two wheels, shall be desirous, during the year commencing on the 5th day of *April*, 1823, of discontinuing to keep the same, and of substituting a carriage with four wheels in lieu thereof, it shall be lawful for him, her, or them so to do, on giving notice of such his or her intention to the surveyor of the said duties acting for the district in which such person shall reside, within six calendar months after the passing of this act, on payment of the difference of duty so compounded for on a two-wheeled carriage, and reduced by this act, and the duty chargeable by the said act, and also reduced by this act, on a four-wheeled carriage, together with the duty

Persons having compounded for a two wheel carriage may substitute a four wheel carriage in the composition, paying only the difference of duty.

4 G.4. c.11. of 5*l*. *per centum* on such difference, to be endorsed by certificate on every such contract of composition by any two of the commissioners acting in the execution of the same acts in the district in which such contract shall have been entered into, and to be made payable from and after the 5th day of *April*, 1823, by half-yearly instalments, during the continuance of the said contract; and which additional payments shall be enforced in like manner as if they were originally inserted in every such contract; and any person seeking the benefit of this provision shall and may, during the continuance of his or her said composition, keep and use any four-wheeled carriage free of duty.

4 G.4. c.45. By stat. 4 G.4. c.45. intituled "*An Act for allowing persons to compound for their assessed taxes for the remainder of the periods of composition limited by former acts; and for giving relief in certain cases therein mentioned,*" after reciting, that whereas under stats. 1 & 2 G.4. c.113. 3 G.4. c.50. (*ante*, p. 482. 493.) all and every the persons therein described were authorised to compound for the duties on *houses*, *windows*, and *lights*, for the term of *six years*, and other assessed taxes therein enumerated for the term of *five years*, to be respectively computed from the 5th day of *April*, 1822, on the terms and conditions, and under the provisions contained in the said acts, on such persons giving the notices of his, her, or their intention to compound, required by the said acts, on or before certain days, which have since elapsed: and whereas it is expedient to extend the provisions of the said acts, for enabling persons now to enter into composition for the remainder of the periods therein limited, and which were unexpired on the 5th day of *April*, 1823, in the manner herein provided; it is enacted, that from and after the passing of this act, (4th *July*, 1823,) it shall be lawful for any person or persons who shall be duly assessed to the said rates and duties, for the year commencing the 5th day of *April*, 1823, and who shall give the notice of their intention to compound within the time and in the manner hereinafter provided, to compound for the rates and duties assessed on their, his, or her *dwelling-house* for the term of *five years*, and for his, or her *other assessed taxes* allowed to be compounded for by the said acts, and therein particularly enumerated, for the term of four years, to commence from the 5th day of *April*, 1823, together with an additional annual duty of 1*s*. for every 20*s*. of the respective amounts so assessed, and so after that rate for any greater or lesser sum than 20*s*.; and the assessments so to be made and compounded for under this act, shall severally be and remain to the same annual amount for the respective periods last mentioned, to all intents as if the said duties had been compounded for under the said acts.

Persons may compound upon assessments commencing 5th April, 1823, in respect of articles allowed by the former acts. Vide *ante*, 1 & 2 G.4. c.113. and 3 G.4. c.50.

Persons intending to compound under this act, to give the notice required by the former acts on or before 1st Sept. 1823.

§ 2. All persons desirous of compounding under this act shall, on or before the 1st day of *September*, 1823, deliver or cause to be delivered, free of charge, to the surveyors acting for the respective districts comprising the parishes or places wherein such persons shall reside, a notice in writing according to the form in the schedule to the said first-mentioned act annexed, marked No. I., and in the manner by the said acts directed, declaring their, his, or her intention to compound under this act, and which notice shall be acted upon, observed, and followed for the purposes of composition on a full and complete assessment for the said year, commencing from the 5th day of *April*, 1823; and

the said commissioners are hereby authorised and required to contract with such persons under the provisions in the said acts and this act, for the periods and in the manner herein limited, and according to the form of contract set forth in the schedule to this act annexed, *mutatis mutandis*, to all intents as if such notices had been delivered within the times by the said acts limited, and under the several provisions thereof. 4 G.4. c.45.

Persons having compounded in Ireland, and coming to reside in G. B., may compound under this act according to their former compositions;

§ 3. And whereas by reason of the repeal of the duties of assessed taxes in *Ireland*, persons who have entered into composition in that part of the U. K., under the provisions of the act authorising compositions in *Ireland*, will, on their removal to *G. B.*, lose the benefit of such compositions in regard to any increase of the description of articles so compounded for in *Ireland*; and it is expedient to give relief to such persons, by allowing them to compound under the provisions of this act, according to the number and extent only of the articles compounded for in *Ireland*; it is enacted, that in every case in which any person so having compounded in *Ireland* shall, on the occasion of their, his, or her residence in *G. B.*, be desirous of retaining the benefit of the same contract of composition entered into in *Ireland*, it shall be lawful for them so to do, and for that purpose to annex to the said notice of their intention to compound under this act, to be given within the period and in manner hereinbefore described, the original contract of composition entered into in *Ireland*, or a true copy thereof, duly authenticated by the proper officer in that behalf; and on the receipt of such notice and contract, or a true copy thereof, it shall be lawful for the commissioners acting in the execution of this act for the district in which such notice shall be delivered, and such person shall reside, to make an assessment of duty on every such person, for the year commencing from the 5th day of *April*, 1823, according to the number only of the particular articles so included in the said contract of composition, and which shall be deemed in such cases as a full assessment, for the purposes of composition, for the like description of articles under this act; and it shall thereupon be lawful for the said commissioners to enter into a contract of composition with such persons, under the provisions of this act; and all such compositions so to be entered into shall be of the same force and effect, and shall give the person or persons compounding the like privileges and advantages in respect of the same description of articles contained in such composition, as would have been enjoyed under any other contract authorised to be made by virtue of this act; provided, that no such contract so to be entered into as last aforesaid, shall be construed to exempt any such persons from assessment during the continuance of their composition, by reason of their, his, or her residence in *G. B.*, for and in respect of any articles kept and used, and chargeable with any duty under the said acts, of a description different from the duties compounded for in *Ireland*, but such persons may, on giving notice of their intention in that behalf, in the manner hereinbefore directed, compound under this act for such other articles, according to a full and true return and assessment for the same, to be made for the said year, commencing as aforesaid, in the manner directed by this act in other cases of composition; and the whole of the duties so to be compounded for may in such cases be included in one and the same contract.

such composition shall not exempt persons from assessment for any articles of a different description to those compounded for, but for which they may also compound in one contract.

4 G.4. c.45.

Where persons compounding remove to other districts, the compositions may be transferred and collected in the district of actual residence on certificate.

§ 4. Where any persons compounding under the said recited acts or this act shall have removed from the district in which such composition shall have been entered into, to another dwelling-house and place of residence, and shall thereupon cease to have any dwelling-house or place of residence within the district in which they so compounded, the annual assessment payable on such composition for the year commencing from the 5th day of *April* next following such removal, shall be transferred to the district in which such persons shall then reside; and it shall be lawful for the respective commissioners acting in the execution of the said acts and of this act, within the district to which such persons shall have so removed, upon receiving a certificate thereof, and of the amount of the annual assessment payable on any such person's contract of composition in the former district, under the hands of any two of the commissioners acting for such last-mentioned district (and which certificate, to be prepared under the authority of the commissioners for the affairs of taxes, the said commissioners acting for the said district are hereby required to sign and cause to be delivered to the surveyor for the same district, as soon as conveniently may be, after every such removal), to cause the several amounts of the duties and instalments compounded for and payable from the period last aforesaid, by any such persons, to be added to and charged in the assessment of the parish to which such persons shall have so removed, and in the annual duplicate of assessment required to be made out by the said commissioners under the said acts for such last-mentioned district; and all such assessments and instalments of composition shall, when so transferred, be collected, levied, and raised under the same powers, and by the same rules, &c., as if the said duties had been originally compounded for and made payable to the collectors in the said last-mentioned district, and as if the same originally formed part of the assessment of the parish or place to which the said instalments shall have become transferred under this act: provided that nothing herein contained, notwithstanding the transfer of the said future instalments, shall prevent the raising and levying of all arrears of composition payable by the persons last herein described, in the district from which they shall have so removed as aforesaid, or otherwise, up to the 5th day of *April* next following such removal, by the same powers and provisions as the said duties were recoverable before the passing of this act; and all such future instalments, until actually transferred to the assessment of another parish, ward, or place, shall so in like manner be raised and levied under the provisions of the said acts, as part of the assessments of the district in which such compositions were entered into.

All instalments and arrears arising within or prior to the year of removal shall be paid in the former district.

On the transfer of the future payments of compositions to the assessment of the parish to which the removal shall take place, the commissioners of the district to dis-

§ 5. In every case when and as the future instalments payable under any composition shall have been transferred, and added to the assessment of the parish or place, in the district to which any person shall have removed under the provisions last hereinbefore contained, and which shall be duly certified under the authority of the commissioners for the affairs of taxes, it shall be lawful for the commissioners acting for the district from which the person whose composition shall be so transferred shall have ceased to reside, to discharge all such future instalments so transferred, from the assessment on the parish or place therewith before

charged, and in the duplicates of the said duties to be prepared and transmitted from the said last-mentioned district, under the provisions of the said acts.

4 G.4. c.45.

charge the assessment therein.

§ 6. In order to the due collection and payment of the instalments on compositions, to all intents as annual assessments in the districts in which the persons chargeable shall reside during the continuance of such compositions, it shall be lawful for the commissioners acting for any district from which any such person shall again and from time to time remove, to observe and follow the like provisions for transferring the instalments payable on such composition, for the year commencing from the 5th day of *April* next following such removal, to the district, parish, ward, and place to which such person shall again remove, and for the commissioners acting for the last-mentioned district to add the same to the assessment, and cause the same to be raised in such last-mentioned district, by the same ways and means as are herein provided with respect to a first removal; and all and every the said provisions last herein contained, as applied to a first removal, shall be observed, followed, and applied to and upon every subsequent removal as well for enforcing the payment of all arrears of the said compositions, as for charging and raising the future instalments, as part of the assessment of the parish, ward, or place, to and in which the person so compounding shall actually remove and reside, as for exonerating and discharging the assessments and duplicates for the parish, ward, and place from which such person or persons shall have so again removed.

The foregoing provisions for transfer of composition to places of residence, applied to further removals by the same persons during the continuance of their compositions.

§ 7. Where any person having compounded under the said acts for a carriage with two wheels, shall have substituted a four-wheel carriage in lieu thereof, and have compounded for the same, and for payment of the difference of duty, under the power given for that purpose by an act passed in this present session of parliament, intituled, "*An act for repealing certain of the duties of assessed taxes, for reducing certain other of the said duties, and for relieving persons who have compounded for the same,*" it shall be lawful for every such person to have and enjoy the same privileges during the continuance of their, his or her said contract, as they would have enjoyed under the said acts, if they respectively had originally compounded for a carriage with four wheels; and all persons who have compounded under the said acts, or who shall compound under this act for a male servant or male servants, chargeable with duty under schedule (C.) No. 1, of stat. 52 *G.* 3. *c.* 93. may employ any male person or male persons, not being servants to such persons so compounding, as occasional waiters, or in any of the capacities enumerated in the said schedule (C.), No. 1. free of any duty, provided such respective employments shall not exceed or extend beyond those allowed and defined by the rules contained in the schedule marked (C.) No. 3. of the said last mentioned act, in respect of such male persons last mentioned; and all assessments made or to be made on such persons so compounding as last aforesaid, during the continuance of his, her, or their composition, in respect of any such occasional waiters or male persons aforesaid, shall be null and void.

Persons having substituted and compounded for a four-wheel carriage in place of a two-wheel carriage under the act 4 G.4. c.11. shall have the same privilege as persons originally compounding for a four-wheel carriage; and persons compounding for male servants, Sched. C. No. I. may employ occasional waiters or male persons as allowed by and described in Schedule C. No. III. free of duty.

§ 8. The several persons who for the time being shall be commissioners for putting in execution the acts relating to assessed taxes, and the said acts for compounding for the said duties,

Commissioners and other officers acting

4 G. 4. c. 45.

under the former composition acts, to act in like manner in the execution of this act.

shall be commissioners for putting in execution this act, and the powers herein referred to or contained; and the several assessors, collectors, surveyors, inspectors, and inspectors general for the time being, appointed or to be appointed to put in execution the said acts, shall respectively be assessors, collectors, surveyors, inspectors, and inspectors general, to put in execution this act; and the commissioners and other persons authorized by the said recited acts to contract and agree for such compositions, or to do or perform any other matter or thing for carrying the said recited acts into execution, shall respectively contract and agree for the compositions to be entered into under this act; and all the powers and authorities given and granted to them by or under the said recited acts, are hereby continued for and during the terms herein limited, and shall severally be applied, construed, deemed, and taken to belong to this act, as part thereof; and the said commissioners and others before mentioned, are hereby empowered to do all things necessary for putting this act in execution, in as full and ample a manner as they or any of them are or were or was authorized to put in execution the said several recited acts.

Provisions o former composition acts to remain in force, except as varied by this act.

§ 9. All and every the provisions, directions, rules, regulations, matters, and things contained in the said recited acts although expressly applied to the compositions made under the said acts, shall severally be construed and deemed to apply to the compositions to be entered into under this act.

The repeal of the duties of 3*s.* on horses, mares, and geldings, by the act of this session, c. 11. declared to extend to the same duty on ponies.

§ 10. And whereas doubts have arisen whether under the provisions of stat. 4 *G.* 4. *c.* 11. the duty of three shillings theretofore chargeable under the schedule marked (F.) of stat. 52 *G.* 3. *c.* 93. passed in the fifty second year of the reign of His late Majesty, therein described, for horses, mares, or geldings being under the height of thirteen hands, are wholly repealed, or reduced only, and it is reasonable and proper to remove such doubts; it is enacted, and it is hereby declared, that all and every the provisions in the said act contained, for repealing the several duties of 3*s.* and of 2*s.* and 10*d.*, and 2*d.* respectively, chargeable by the several acts therein recited for and in respect of horses, mares, geldings, or mules, shall be deemed and taken to extend to the repeal of the said duties of 3*s.* on all horses, mares, or geldings under the heighth of 13 hands in the said schedule (F.) described.

Schedule.

The schedule to which stat. 4 *G.* 4. *c.* 45. refers contains the form of contract of composition under that act.

5 G. 4. c. 44.

And now by stat. 5 G. 4. *c.* 44. § 1. after reciting that whereas by stat. 4 *G.* 4. *c.* 45. (*viz.* § 1.) the persons therein described, who had had not entered into composition under the provisions of the acts therein mentioned, within the times thereby limited, were authorized, on giving notice on or before 1st *Sept.* 1823, to compound on their respective assessments, to be made for the year commencing 5th *April*, 1823, for the then remainder of the periods in the said acts named, (that is to say) for the term of 5 years for the duties on houses and windows, and for the term of 4 years for the other assessed taxes: and whereas it is expedient further to extend the provisions of the said acts, for enabling persons now to enter into composition for the remainder of the said periods which were unexpired on 5th *April*, 1824, in the manner herein provided; it is enacted, that from and after the passing

of this act (3d *June* 1824) it shall and may be lawful for any person or persons who shall be duly assessed to the said rates and duties for the year commencing 5th *April*, 1824, and who shall give the notice of their, his, or her intention to compound within the time and in the manner hereinafter provided, and they are hereby respectively declared to be competent to compound for the rates and duties assessed on their, his, or her dwelling house for the term of 4 years, and for their, his, or her other assessed taxes allowed to be compounded for by the said acts, and therein particularly enumerated, for the term of 3 years respectively, to commence from the 5th *April*, 1824, together with an additional annual duty of 1*s*. for every 20*s*. of the respective amounts so assessed, and so after that rate for any greater or lesser sum than 20*s*. and the assessments so to be made and compounded for under this act, shall severally be and remain to the same annual amount for the respective periods last mentioned, to all intents as if the said duties had been compounded for under the said acts.

5 G.4. c.44. Persons may compound upon assessments commencing 5th April, 1824, in respect of articles allowed by the former acts; The duties on houses and windows for 4 years, and of the other assessed taxes for 3 years.

By § 2. every person and persons desirous of compounding under this act shall, on or before 2d *Aug*. 1824, deliver or cause to be delivered, free of charge, to the surveyors acting for the respective districts comprising the parishes or places wherein such persons shall respectively reside, a notice in writing, according to the form and in the manner by the said acts directed, declaring their, his, or her intention to compound under this act, and which notice shall be acted upon, observed, and followed for the purposes of composition, on a full and complete assessment for the said year, commencing from 5th *April*, 1824; and the said commissioners shall contract with such persons respectively, under the provisions in the said recited acts and this act respectively contained, for the periods and in the manner herein limited, and according to the form of contract set forth in the schedule to this act annexed, *mutatis mutandis*, to all intents as if such notices had been delivered within the times by the said acts limited, and under the several provisions thereof.

Persons intending to compound under this act, to give the notice required by the former acts on or before the 2d August, 1824.

By § 3. Commissioners and other officers acting under the former composition acts, to act in like manner in the execution of this act. See a similar provision, stat. 4 *G*. 4. *c*. 45. § 8. *ante*, p. 501.

By § 8. Provisions of former composition acts, except as hereby varied, apply to this act in entering into compositions, and in granting relief under existing compositions. See a similar provision, stat. 4 *G*. 4. *c*. 45. § 9. *ante*, p. 502.

The schedule to which stat. 5 *G*. 4. *c*. 44. refers contains the form of contract of composition under that act.

Thames.

CONCERNING regulations of the navigation on the river of *Thames*; the same not being general, it will be sufficient only to mention the several acts touching the same; *viz.*

2 & 3 *P. & M. c.* 16.	2 *G.* 3. *c.* 28.
1 *J.* 1. *c.* 16.	11 *G.* 3. *c.* 15.
6 & 7 *W. c.* 21.	14 *G.* 3. *c.* 71.
11 & 12 *W. c.* 21.	16 *G.* 3. *c.* 43.
4 *Ann. c* 13.	17 *G.* 3. *c.* 18.
9 *Ann. c* 26.	34 *G.* 3. *c.* 65.
2 *G.* 2. *c.* 26.	39 & 40 G. 3. *c.* 87.
4 *G.* 2. *c.* 24.	42 *G.* 3. *c.* 76.
5 *G* 2. *c.* 20.	43 *G.* 3. *c.* 115.
6 *G.* 2. *c.* 29.	17 *G.* 3. *sess.* 1. *c.* 37.
10 *G.* 2. *c.* 31.	51 *G.* 3. *c.* 119.
24 *G.* 2. *c.* 8.	3 *G.* 4. *c.* 55.

Many of which acts, containing matters respecting the regulation of watermen, the prevention of frauds on the said river, &c. rather regard *London* and its jurisdiction, than the duty of those for whom this book is more immediately calculated, and are therefore omitted, but stat 3 *G.* 1. *c.* 55 (The *Metropolis Police act*) will be found, Vol. III. *tit.* Police of the Metropolis.

Theft. See tit. **Larceny**, Vol. III.
Theftbote. See tit. **Felony**, Vol. II.

Thread.

28 G. 3. c. 17. Ounce or nun's thread. Reel to be used in making.

BY stat 28 *G.* 3. *c.* 17. § 1. The reel used in reeling or making up that kind of thread called *ounce* or *nun's thread* shall be one yard, or 36 inches in circumference; and whoever shall use for such purpose any reel of less circumference, shall, on conviction, forfeit such reel, which shall be destroyed, and also 5*l.* for every such offence to the informer.

Thread, how to be made up.

By § 2. all *ounce* or *nun's thread* manufactured in *G. B.* shall be made up in hanks, ounces, quarters, and pounds avoirdupoise weight; each hank containing 30 threads or rounds of the said reel, of the same quality and fineness, and each ounce containing a particular number of such hanks entire, of the same quality and fineness, and no fractions or broken parts of a hank; and each quarter containing four such ounces, and each pound four such quarters; and the cover of each pound or smaller package of such thread shall be marked with a stamp, ascertaining the con-

tents of such package to be ounce or nun's thread, and specifying the number of banks in each ounce thereof, and expressing the manufacturer's name and place of abode. And no person shall reel or make up any such thread in any other manner than as aforesaid, or sell or expose the same to sale, knowing it to have been so improperly reeled or made up, on pain of forfeiting such thread, and also 10*l.* for every pound thereof to the informer. 28 G. 3. c. 17.

By § 3. if any person shall imitate or counterfeit the mark or stamp used by any manufacturer of such thread, in order to make the thread therewith stamped pass for the manufacture of the person whose stamp is so counterfeited, or shall mark any such thread with a stamp so counterfeited, or sell or expose to sale any thread so marked, knowing thereof, he shall on conviction, forfeit such stamp, to be broken and destroyed; and shall also forfeit to the person whose stamp is so counterfeited the thread so stamped, and also 10*l.* **Counterfeit the manufacturer's mark.**

And by § 4. two justices of the county or place where the offence is committed, or where the offender shall reside or be found, may hear and determine all offences against this act, who on information exhibited or complaint in writing, may summon the accused and witnesses on either side, and on proof by confession or by examination of the party accused or by the oath of two witnesses, give judgment for the forfeiture and penalty, and levy the penalty by distress and sale of the offender's goods or effects; which, if not redeemed in ten days, may be sold, returning the overplus, after deducting the charges of such distress and sale; and for want of sufficient distress such offender shall be committed to gaol for three months, unless such penalty be sooner paid. **Two justices may hear offences.**

Persons aggrieved by such judgment, may, upon giving security to make good the sentence, and to pay such costs as shall be ordered in case such judgment be affirmed, appeal to the next sessions, who may summon and examine witnesses on oath, and finally hear and determine the same; and in case the judgment be affirmed, they may order the appellant to pay such costs as to them shall seem meet. **Appeal.**

§ 5. And the said justices or sessions may mitigate any such penalties as to them shall seem expedient, but in no case to be reduced below one half and costs of prosecution. **Mitigation.**

§ 6. Witness duly summoned to give evidence before such justices, either on one part or the other, not attending without reasonable cause to be allowed by such justices, shall forfeit 5*l.* to the prosecutor, to be levied as aforesaid; and besides, shall be liable to be compelled to appear upon another summons under the like penalty, or any other means known and practised in the law in similar cases. **Witness.**

§ 7. When any thread shall be seized in pursuance of this act, and it is alleged to be of foreign manufacture, the *onus probandi* shall lie upon the owner; and if he fail in such proof, the thread shall be forfeited, and the owner be liable to the penalty aforesaid. ***Onus probandi* to lie upon the owner.**

Tiles. See Bricks, Vol. I.

Time.

Time of legal memory.

TIME of legal memory hath been long ago ascertained by the law, to commence from the beginning of the reign of *Richard* the first [*viz.* 6th *July A. D.* 1189], and any custom may be destroyed by evidence of non-existence in any part of the long period from that time to the present. 2 *Inst.* 238, 239. 2 *Blac. Com.* 30. n. (*u*) 31.

This rule was adopted when by stat. *Westm.* 1 (3 *Ed.* 1. c. 39.) the reign of *Richard* the First was made the time of limitation in a writ of right; but this period in a writ of right has been since reduced to 60 years by stat. 32 *H.* 8. *c.* 2. See 3 *Burn's Eccl. Law*, p. 449. *Tyrwhitt's note.*

Day.

Where computation of time is to be made from an act done; (as where no writ shall be sued out against any person acting in execution of a statute, "until one calendar month next after notice," in writing, shall have been delivered to him, &c.) the day on which the act is done is to be *included* in the reckoning; therefore, when the law requires that a month's notice of an action be given, the month begins with the day on which the notice is served. *Castle* v. *Burditt*, 3 *T. R.* 623. *Glassington* v. *Rawlins*, 3 *East*, 407.

Month.

And where the word "month" is used, in any statute, without the addition of "calendar," or other words to shew that the legislature intended a calendar month, it is understood to mean a lunar month. *Lacon* v. *Hooper*, 6 *T. R.* 224. See 2 *Blac. Com.* 141, 142.

In matters temporal the term month is understood to mean lunar month, whilst in matters ecclesiastical it is deemed calendar, because in each of these matters a different mode of computation respectively prevails. *Per Le Blanc* J. *Lang* v. *Gale*, 1 *M & S.* 117, and see *Watson* v. *Pears*, 2 *Campb.* 294. *Cathcart* v. *Hardy*, 2 *M. & S.* 536.

Limitation of actions against officers of customs.

Under stat. 28 *G.* 3. *c.* 37. which limits the commencing of actions against officers of the customs to *three months* after the matter or thing done; but enacts that the officer shall have a *calendar* month's notice of action, and a *calendar* month in which to tender amends: the court of C. P. held, that actions against such officers must be commenced within three *lunar* months after the matter or thing done.—And *per Park* J. One of the earliest things we learn is, that the word *month*, *ex vi termini*, means a lunar month. In mercantile matters there may be usage to the contrary, but, in general, if the word month is used, lunar month is meant, and therefore, we always add the word *calendar* when it is desired that the computation should be by calendar months. *Catesby's case* (6 *Rep.* 62.) was touching ecclesiastical matters, in which it is the usage to compute by calendar months. But in that case Ld. *Coke* says, that though a lease for *a* twelve mon*th* would give an interest for a year, a lease for twelve month*s* would give an interest for no more than forty-eight weeks. *Crooke* v. *M'Tavish*, 1 *Bing.* 307.

Tin. See **Pewter**, Vol. III.

Tithes.

§ I. *Of Tithes due from any Person.*
[7 & 8 W. c. 6. — 27 G. 2. c. 20. — 53 G. 3. c. 127.]

II. *Of Tithes, and other Church Rates and Payments, due from Quakers only.*
[7 & 8 W. c. 34. — 1 G. 1. st. 2. c. 6. — 27 G. 2. c. 20. — 53 G. 3. c. 127.]

III. *Of Contempts for Tithes in the Spiritual Court.*
[27 H. 8. c. 20. — 32 H. 8. c. 7.]

§ I. Of Tithes due from any Person.

THE books in general confound stat. 7 & 8 *W. c.* 6. concerning small tithes only, due from any person whatsoever, (whether quaker or not, being no way material) with stats. 7 & 8 *W.* 3. *c.* 34. and 1 *G. st.* 2. *c.* 6. concerning quakers' tithes only, great and small, and their other church dues. Nevertheless the acts are entirely distinct in themselves, and the method of proceeding in the one case and in the other is different in almost every instance. Care has therefore been taken to extricate them out of this confusion, by inserting them separately, and by drawing distinct forms upon each, according to the different methods of proceeding.

7 & 8 W. c. 6. For what tithes. By stat. 7 & 8 *W. c.* 6. § 1. For the more easy and effectual recovery of small tithes, and the value of them, where the same shall be unduly substracted and detained, where the same do not amount to above the yearly value of 40*s.* (*a*) from any one person, it is enacted, that all persons shall well and truly set out and pay the small tithes, and compositions and agreements for the same, with all offerings, oblations and obventions, to the several rectors, vicars, and other persons to whom they are due, in their several parishes, according to the rights, customs, and prescriptions commonly used within the said parishes respectively; and if any person subtract or withdraw, or anyways fail in the true payment of such small tithes, &c., by the space of twenty days at most after demand thereof, the person to whom the same shall be due may make his complaint (A) in writing to two or more justices of the peace within the county, and where the same shall grow due, (neither of which justices is to be the patron of the church or chapel whence the said tithes arise, nor anyways interested in such tithes).

Small tithes not paid in 20 days after demand, lawful to complain to two justices not interested. A.

Complaint in writing.] *R.* v. *Furness*, 1 *Str.* 264. Order for non-payment of small tithes was quashed, because said only *upon complaint* generally, and the statute requires the complaint to be *in writing*.

Who may summon the persons § 2. If any complaint shall be brought to two or more justices concerning small tithes, offerings, oblations, obventions or compo-

(*a*) See stat. 53 G. 3. c. 127. § 4. enlarging the amount to any sum not exceeding 10*l.* *post*, p. 512.

7 & 8 W. 3 c. 6.

B. complained of, and on default of appearance determine the complaint, &c.

sitions, the said justices are hereby authorised and required to summon, in writing (B) under their hands and seals, by reasonable warning, every such person or persons against whom any complaint shall be made, and after his or their appearance, or upon default of their appearance, the said warning or summons being proved before them upon oath, the said justices or any two of them shall proceed to hear and determine the said complaint, upon the proofs, evidences and testimonies produced before them, shall, in writing under their hands and seals, adjudge the case, (C) and give such reasonable allowance and compensation for such tithes, &c. so substracted or withheld, as they shall judge to be just and reasonable, and all such costs and charges, not exceeding 10*s.*, as upon the merits of the cause shall appear just.

C.

On refusal to pay in 10 days after notice, the constables, &c. may distrain. D.

§ 3. If any person or persons shall refuse or neglect, by the space of ten days after notice given, to pay or satisfy any such sum, as upon such complaint and proceeding shall by two or more justices be adjudged, the constables and churchwardens of the said parish, or one of them, shall, by warrant (D) under the hands and seals of the said justices to them directed, distrain the goods and chattels of the party so refusing or neglecting as aforesaid, and after detaining them by the space of three days, in case the said sum so adjudged to be paid, together with reasonable charges for making and detaining the said distress, be not tendered or paid by the said party in the mean time, shall and may make public sale of the same, and pay to the party complaining so much of the money arising by such sale as may satisfy the said sum so adjudged, retaining to themselves such reasonable charges for making and keeping the said distress, as the said justice shall think fit, and shall render the overplus (if any be) to the owner.

By § 6. They must have become due within two years next before the complaint.

§ 5. They must not be in *London*, nor in any place where the tithes are otherwise settled by act of parliament.

§ 14. And they must not have been begun to be sued for in the exchequer or ecclesiastical court.

Persons aggrieved may appeal to the sessions.

§ 7. Enacts, " That any person finding himself aggrieved by any judgment to be given by any two justices of the peace, may appeal to the next general quarter sessions, and the justices there present, or the major part of them, shall proceed finally to hear and determine the matter, and to reverse the said judgment given by the first two justices if they shall see cause, &c.; and if the justices shall find cause to confirm the judgment, they shall then decree the same by order of sessions, and shall also proceed to give such costs against the appellant, to be levied by distress and sale of his goods and chattels, as to them shall seem just and reasonable; and no proceedings or judgment had or to be had by virtue of this act. shall be removed or superseded by virtue of any writ of *certiorari* or other writ, unless the title of such tithes, &c. shall be in question."

If judgment be confirmed, justices to give costs, &c.

Persons complained of, insisting on any composition, &c. and giving security to pay costs, justices

§ 8. Enacts, " That where any person or persons complained of for substracting or withholding any small tithes, or other duties aforesaid, shall, before the justices of the peace to whom such complaint is made, insist upon any prescription, composition, or *modus decimandi*, agreement, or title, whereby he ought to be freed from payment of the said tithes, &c. in question, and deliver

the same in writing to the said justices of the peace, subscribed by him, and shall then give to the party complaining reasonable and sufficient security to the satisfaction of the said justices to pay all such costs and damages as, upon a trial at law to be had for that purpose in any of H. M.'s courts having cognizance of that matter, shall be given against him in case the said prescription, composition, or *modus decimandi*, shall not, upon the said trial, be allowed; that in that case the said justices of the peace shall forbear to give any judgment in the matter, and that then and in such case the person or persons so complaining shall be at liberty to prosecute such person or persons for their said substraction in any other court or courts whatsoever, where he might have sued before the making of this act."

7 & 8 W. c. 6. — not to give judgment.

R. v. *Jeffreys*, *E.* 4 *G.* 4. 1 *B.* & *C.* 604. Two justices, by an order dated the 5th day of *November* 1821, ordered *Jeffreys* to pay to the lessee of the tithes of the parish of *Glemsford*, in the county of *Suffolk*, the sum of 6*l.* for his tithe of milk and calves, arising in the parish of *Glemsford*, and due to the lessee, together with his costs and charges. *Jeffreys* was duly summoned to answer the complaint of the lessee, and appeared before the justices, but offered no evidence of a *modus*. The sessions, on appeal, confirmed the order, subject, to the opinion of the court upon the following case:—The respondent having proved the notice, summons, and order, and his title as lessee, and that the value of the tithe was of the amount demanded; the appellant claimed to be exempted from the payment of the tithe, insisting that it was covered by a *modus*, and he tendered evidence to prove the existence of such a *modus*. The court rejected the evidence, being of opinion that they had no power to try the question. After argument;—*per Abbott* C. J. As at present advised, I am disposed to think that by *modus* in this statute, something different from title is meant. And as the word *modus* is not to be found in the 7th section, which relates to the *certiorari*, I think that the writ ought not to have issued. I am also disposed to think, that the 8th section is compulsory, that the party relying upon a *modus* shall set it up in the manner thereby directed. The act was intended to apply where there was no question of law as to the right to the tithe; that in such cases the party entitled might have a cheap remedy, which could not be injurious to the party from whom the tithe is due. If the 8th section be not compulsory, this consequence will follow, that the party called upon to pay may, at his will and pleasure, leave the question of *modus* to be tried by the justices, or may withdraw it from their consideration; whereas the other side can have no such option. This, however, is a point of great consequence, and I should have wished for more time to consider it, if our judgment proceeded upon that ground. But upon the other point I entertain no doubt. If it was originally the intention of the party to set up a *modus*, he should have stated that before the two justices. In making a claim of tithes, the party would come prepared to shew the occupation of land by the party refusing to pay, and that titheable matter was produced. A question of *modus* is something quite distinct from that which the party claiming would come prepared to prove. If, therefore, the *modus* was not set up in the first instance, the justices at sessions might exercise their discretion as

Where a person who had been summoned by two justices under 7 & 8 W. 3. c. 6. § 1. appeared before them, and was ordered to pay the tithes demanded, and did not raise any question of modus, but afterwards appealed to the sessions, and there for the first time, set up a modus, and tendered evidence to prove it: Held, that the justices at sessions might, in the exercise of their discretion, reject the evidence.

Semble. That the power of justices to try questions of tithe under 7 & 8 W. 3. c. 6. is taken away by the 8th § of that act, where a question of modus is raised.

Rex v. Jeffreys. to receiving or rejecting evidence of it. The claimant might otherwise be taken by surprise, and the defendant would obtain a very unfair advantage. *Bayley* J. My opinion is founded upon the last point. The justices at sessions had a right to exercise their discretion as to receiving or rejecting the evidence of *modus*, and I think that they came to a proper conclusion on that point. The party had a right of appeal against the decision of the two justices upon the evidence laid before them. It does not appear that the appellant gave any notice of the grounds of his appeal; and, in the absence of any such notice, and of any mention of the *modus* in the first instance, before the two justices, I think that the justices at sessions exercised a sound discretion when they rejected the evidence tendered. Order of sessions affirmed.

7 & 8 W. c.6. § 12. Also they may give costs, not exceeding 10*s*., to the party prosecuted, if they shall find the complaint to be false and vexatious.

Distress out of the county. § 10. And if any person against whom judgment shall be obtained shall remove out of the county before the sum shall be levied, the justices who made the judgment, or one of them, shall certify the same under hand and seal to any justice of such other county, who shall by his warrant order the same to be levied in like manner.

Adjudication to be recorded. § 9. Finally, every person who shall obtain any judgment, or against whom any such judgment shall be obtained, shall cause the same to be inrolled, at the next sessions, for which the clerk of the peace shall have 1*s*.

53 G.3. c.127. Justices of peace may determine complaints respecting tithes not exceeding 10*l*. By stat. 53 *G*. 3. *c*. 127. § 4. reciting the 7 & 8 *W*. 3. as to recovery of small tithes, to the value of 40*s*., and that it was expedient to enlarge such amount, and to extend the said amount to all tithes whatsoever of certain limited amount, it is enacted, That justices of the peace, as in said act mentioned, shall be authorised and required to hear and determine all complaints touching tithes, oblations, and compositions substracted or withheld, where the same shall not exceed 10*l*. in amount, from any one person, in all such cases and by all such means, and subject to all such provisions and remedies by appeal or otherwise, as contained in the said act of king *William*, touching small tithes, oblations, and compositions, not exceeding 40*s*.: Provided always nevertheless, that from and after the passing of this act, one justice of the peace shall be competent to receive the original complaint, and to summon the parties to appear before two or more justices of the peace, as in the said act is set forth.

Limitation of actions respecting tithes. § 5. No action shall be brought for the recovery of any penalty for the not setting out tithes, nor any such instituted in any court of equity, or in any ecclesiastical court, to recover the value of any tithes, unless commenced within six years from the time when such tithes became due.

§ II. Of Tithes, and other Church Rates and Payments, due from Quakers only.

7 & 8 W. 3. c. 34. Complaint. By stat. 7 & 8 *W*. 3. *c*. 34. § 4. It is enacted, that where any quaker shall refuse to pay or compound for any tithes, or to pay

any church rates, (or by 1 *G.* 1. *st.* 2. *c.* 6. § 2. for any customary or other rights, dues, or payments belonging to any church or chapel, which of right by law and custom ought to be paid for the stipend or maintenance of any minister or curate officiating in any church or chapel) any parson, vicar, curate, farmer, or proprietor of such tithes, or any churchwarden or chapelwarden, or other person who ought to have, receive, or collect any such tithes, rates, dues, or payments, may make complaint (E) to any two justices, other than such as is patron of the church or chapel, or any way interested in the tithes.

1 G. 1. st. 2. c. 6.

E.

Upon which complaint the said justices shall summon (F) in writing, under their hands and seals, by reasonable warning, such quaker. (And by stat. 53 *G.* 3. *c.* 127. § 6. it is provided, that one justice of the peace shall be competent to receive the original complaint, and to summon the parties to appear before two or more justices of the peace, as in the said act is set forth.)

F. Summons.

And after appearance, or on default of appearance (the warning or summons being proved before them upon oath), they may proceed to examine on oath (or in such manner as by this act is provided) the truth of the complaint, and to ascertain and state what is due and payable.

Hearing.

And by order (G) under their hands and seals, they may direct and appoint the payment thereof; so as the sum ordered (as is aforesaid) do not exceed 10*l.* (And by stat. 53 *G.* 3. *c.* 127. § 6. All the provisions of the said acts of *W.* 3. and *G.* 1. shall be deemed and taken to extend to any value not exceeding 50*l.*) And also such costs and charges as they shall think reasonable, not exceeding 10*s.*

G. Adjudication and costs.

And on refusal to pay, it shall be lawful for any one of the two *next* justices, by warrant (H) under his hand and seal, to levy the same by distress and sale of the goods of such offender, his executors or administrators, rendering the overplus, the necessary charges of distraining being thereout first deducted and allowed by the said justice; unless it be in the case of appeal, and then no warrant of distress shall be granted till after the appeal shall be determined.

Distress and sale. H.

Therefore it seemeth best not to make out, at least not to execute, the warrant of distress, until after the next sessions.

Note again: Here is no time limited for detaining the distress, nor charges allowed for the keeping of it; so that it may be sold immediately.

And by stat. 27 *G.* 2. *c.* 20. which in all other cases gives the justices power, in their warrant of distress, to order the goods distrained to be detained for a certain time, not less than four days, the *tithes* and *church rates* of quakers (although not those other dues and payments) above mentioned are excepted.

27 G. 2. c. 20

Also it is observable here, that stat. 7 & 8 *W.* limits the proceedings to the two *next* justices (not interested); and the statute of the 1 *G.* enlarges the same to *any* two justices (not interested) as to the complaint (*a*), summons, and order, but restrains the *distress* to the limitations in the statute of the 7 & 8 *W.*, that is, to one of the two *next* justices as aforesaid; which possibly may have been an oversight, for it may happen hereupon that neither of the two justices which made the order can enforce the execution of it by distress. To prevent which inconvenience, it may be

(*a*) See 53 G. c. 127. § 6. *supra.*

7 & 8 W. 3. c. 67. proper that one at least of the justices complained to be one of the two next justices (not interested).

Appeal. § 7. Any person aggrieved by the judgment of the two justices may appeal to the next sessions; where, if the judgment shall be affirmed, they shall decree the same by order of sessions, and give costs against the appellant, to be levied by distress and sale, as to them shall seem reasonable.

Certiorari. And no proceedings herein shall be removed by *certiorari*, or otherwise, unless the title of such tithes shall be in question.

R. v. *Roger Wakefield and others*, *H.* 31 *G.* 2. *M. S.* (B) An order of two justices was made against three persons being quakers for the payment of certain customary payments called *chapel salary*, to the reverend Mr. *Smith*, curate of the chapel of *Burniside*, in *Westmorland*, where the said quakers had estates chargeable, with the said payments. On appeal to the sessions the order was confirmed. The quakers moved for a *certiorari*, and though cause was shewn against the issuing of it, yet a *certiorari* was granted; and the return was filed, and exceptions were taken to it, and argued at the bar. Lord *Mansfield* C.J. delivered the opinion of the court; that the *certiorari* ought not to have issued at all; that the return should be taken off the file; and all proceedings thereon fall to the ground, and that the orders of the justices and sessions should be remanded. The order of the justices (he observed) was made on the statute of the 1 *G.* 1. *st.* 2. *c.* 6. which extends the 7 & 8 *W. c.* 34., concerning tithes, to all customary payments due to clergymen. Those two acts are to be taken together as one law. They were intended for the benefit of the quakers; to prevent their being liable to expensive suits for refusing to pay tithes upon scruples of conscience, by giving an apparent compulsory method of levying tithes and other customary payments in a summary way. This proceeding cannot be removed by *certiorari*, unless the title to these customary payments comes in question; and on this proviso the present question arises. The affidavits read on the original motion for the *certiorari* set forth, that before the justices and the sessions the defendants controverted the right of the curate to these customary payments. The affidavits against the *certiorari* say, that these payments have been made from time immemorial; that no inhabitant ever disputed it but these quakers; that they have enjoyed the messuages but a few years, and that the former inhabitants never disputed the right of the parson. Taking these affidavits together, it is clear that the quakers controvert the right to the customary only, as all quakers controvert the payment of all dues to all clergymen upon scruples of conscience, which is the case directly within the act, and the proceeding must therefore follow the directions of the act. The quakers themselves have acknowledged the jurisdiction of the justices by appealing to the sessions; whereas had they intended to dispute the title to these customary payments, they would at first have removed the order of two justices by *certiorari*. The only difficulty remaining arises from the return being already filed. But there are several instances of this court superseding a *certiorari* after the return filed; as where an order of justices is removed, and it appears upon the return that the parties had a right to appeal to the sessions, and that the time for appealing was not expired when

the *certiorari* issued; in such case, this court supersedes the writ of *certiorari quia improvidè emanavit.* The same must be done in the present case.

For recovery of church or chapel rates from quakers and others to a certain amount, see stat. 53 *G.* 3. *c.* 127. under title Churchwardens, § III. in Vol. I. p. 603.

III. Of Contempts for Tithes in the Spiritual Court.

By stat 27 *H.* 8. *c.* 20. § 1. If the ecclesiastical judge shall, for any contempt, contumacy, disobedience, or other misdemeanor of any defendant in the case of tithes, make information and request to the justices of the peace of the shire where the offender dwelleth, to assist him to order and reform any such person; two of the said justices (1 *Q.*) may cause the person to be attached, and commit him to ward, till he shall have found sufficient surety, to be bound to the king by recognizance or otherwise, to give due obedience to the process, proceedings, decrees, and sentences of the ecclesiastical court where the suit shall be. **27 H. 8. c. 20. Contempt of process.**

And by stat. 32 *H.* 8. *c.* 7. § 4. If any person, after sentence definitive given against him in the ecclesiastical court, shall obstinately and wilfully refuse to pay his tithes, or duties, or sums of money adjudged for the same, two justices (1 *Q.*) may, upon information, certificate, or complaint in writing by the ecclesiastical judge, cause the party refusing to be attached and committed to the next gaol, till he shall have found sufficient sureties, by recognizance or otherwise, to perform the said definitive sentence and judgment. **32 H. 8. c. 7. Contempt after judgment.**

[See also stat. 53 *G.* 3. *c.* 127. the provisions of which, not giving any power to justices, are not here inserted.]

(A) Complaint for Tithes, due from any Person: on Stats. 7 & 8 *W.* *c.* 6. § 1. 6. and 53 *G.* 3. *c.* 127. § 4. **A.**

TO J. P. *and* K. P. *esquires, two* (or J. P. *esquire, one* (a)) *of his majesty's justices of the peace in and for the county of*———, A. I. *of*——— *in the said county, clerk, humbly complaineth,*

That he the said complainant did by the space of twenty days and upwards before the day of the date hereof demand of A. O. *of* ———, *in the parish of*———, *in the county aforesaid, yeoman, the tithes,* [or, *compositions for the tithes,* or] *offerings, oblations, and obventions justly become due, within two years now last past, from him the said* A. O. *unto him the said complainant, to the value of*——— ; *and that he the said* A. O. *did upon the said demand refuse, and doth yet refuse, to pay, and hath not paid the same, nor any part thereof; the said complainant therefore prayeth such redress in the premises, as to you shall seem meet, and as to the law doth appertain. Signed the* ——— *day of*———, *in the* ——— *year of*———.

(a) See stat. 3 G. 4. c. 25. § 2. tit. Conviction.

B.

(B) Summons for Tithes, &c. thereon.

Westmorland, to wit. } To the constable of ———.

WHEREAS complaint in writing hath been made unto me ———, *one* (or *us* ——— *two*) *of his majesty's justices of the peace for the said county, by* A. I. *of* ———, *in the said county, clerk, that* A. O. ———, *in the parish of* ———, *in the said county, yeoman, hath for above the space of twenty days before the time of the said complaint so made unto me,* [or *us*] *as aforesaid, refused to pay unto him the said* A. I. *and hath not yet paid the tithes,* [or, *compositions for the tithes,* nor the] *offerings, oblations, and obventions, justly due from him the said* A. O. *to him the said* A. I.; *these are therefore to command you forthwith, upon sight hereof, to summon the said* A. O. *to appear before us,* [or, *me, and such other of his majesty's justices of the peace for the said county as may be present*] *at the house of* ———, *in* ———, *in the said county, on* Saturday *the* ——— *day of this present month of* ———, *at the hour of* ——— *in the forenoon of the same day, to answer unto the said complaint. And be you then there to certify what you shall have done in the premises. Given under our hands and seals* (or, *my hand and seal*) *at* ———, *in the said county, the* ——— *day of* ———, *in the* ——— *year of* ———.

C.

(C) Order thereon for Payment of Tithes, &c.

Westmorland, to wit. { *WHEREAS complaint in writing hath been made unto us* ———, *two of his majesty's justices of the peace for the said county, by* A. I. *vicar of the parish of* ———, *in the said county, that* A. O. *of* ———, *in the said parish of* ———, *in the county aforesaid, yeoman, did refuse, for the space of twenty days next before the time of the said complaint so made unto us as aforesaid, to pay the tithes,* [or, *compositions for the tithes,* nor the] *offerings, oblations, and obventions, arising in the said parish of* ———, *and justly due from him the said* A. O., *to him the said* A. I.; *We therefore the said justices, being neither of us patron of the parish church* [or *chapel*] *of* ——— *aforesaid, nor any ways interested in any of the said tithes, offerings, oblations, or obventions, having duly summoned the said* A. O. *before us, and having duly examined the truth and justice of the said complaint upon oath, do find that there is justly due from the said* A. O. *to the said* A. I. *the sum of* ———, *being the value of the said tithes,* [or, *compositions for the said tithes,*] *offerings, oblations, and obventions, become due within two years last past; and do therefore adjudge and order the aforesaid* A. O. *to pay or cause to be paid unto the said* A. I. *the aforesaid sum of* ———, *and also the sum of ten shillings for the costs and charges of the said* A. I. *in prosecuting the said* A. O. *for the recovery of his said just dues. Given under our hands and seals at* ———, *in the said county, the* ——— *day of* ———, *in the* ——— *year of the reign of* ———.

(D) Distress for Tithes due from any Person; on Stats. 7 & 8 *W. c.*6. § 1. 3. and 53 *G.* 3. *c.*127. § 4. D.

Westmorland, to wit. } To the constable of ———, in the said county, and to the churchwardens of the parish of ———, in the said county, and to every of them.

WHEREAS upon the complaint in writing of A. I. *vicar of the parish of ——— aforesaid, in the county aforesaid,* A. O. *of ———, in the said parish, in the county aforesaid, yeoman, hath been duly summoned to appear before us ———, two of his majesty's justices of the peace for the said county, to be examined for the non-payment of the tithes,* [or, *compositions for the tithes,*] *offerings, oblations, and obventions due unto the said* A. I.; *and whereas we the said justices, being neither of us patron of the parish church* [or, *chapel*] *of ——— aforesaid, nor any way interested in any of the said tithes,* [*compositions,*] *offerings, oblations, or obventions, have duly examined the truth and justice of the said complaint, and have ordered him the said* A. O. *to pay unto the said* A. I. *the sum of ———, being the value of the said ——— tithes,* [*compositions*] *offerings, oblations, and obventions, become due from him the said* A. O. *to him the said* A. I. *within two years next before the said complaint so made unto us as aforesaid, together with the sum of ten shillings for the costs and charges of the said* A. I. *for the recovery of his said just dues; making in the whole the sum of ———; And whereas it appeareth unto us the said justices, that the said* A. O. *had due notice of our said order for the space of ten days and upwards before the day of the date hereof, but hath refused to pay and hath not yet paid the said sum of ———, nor any part thereof; these are therefore to command you jointly and severally, that you, or some or one of you, do forthwith distrain the goods and chattels of the said* A. O.; *and in case the said sum of ———, together with your reasonable charges of making and detaining the said distress be not paid, or tendered to be paid by him the said* A. O. *in* [*four days*] *next after such distress made, that then you do make public sale of the said goods and chattels so distrained as aforesaid, and out of the money arising from such sale, that you pay or cause to be paid unto him the said* A. I. *the said sum of ———, and thereout also deduct and detain your reasonable charges of making, keeping, and selling the said distress; and if any overplus shall remain after such payment and deduction as aforesaid, that then you do render the same unto him the said* A. O. *upon demand. Given under our hands and seals at ———, in the said county, the ——— day of ———, in the ——— year of ———.*

(E) Complaint for Quakers' Tithes, on Stats. 7 & 8 *W. c.*34. 1 *G.*1. *st.*2. *c.*6. and 53 *G.*3. *c.* 127. E.

TO J. P. *and* K. P. *esquires, two* [or J. P. *one*] *of his majesty's justices of the peace for the county of ———,* A. I. *rector of the parish church of ———, in the said county* [or as the case shall be], *humbly complaineth;*

That A. O. *of ———, in the parish aforesaid, in the county aforesaid, yeoman, being a person commonly called a quaker, hath*

refused to pay unto him the said A. I. or to compound for the tithes, and other rights, dues, and payments belonging to the church of ——— aforesaid, and justly due to him the said A. I. from him the said A. O.; the said complainant therefore prayeth such redress in the premises as to you shall seem meet, and as to law doth appertain. Signed the ——— day of ———, in the ——— year of ———.

F. (F) Summons of a Quaker for Tithes, on Stats. 7 & 8 *W. c.* 34. 1 *G.* 1. *st.* 2. *c.* 6. and 53 *G.* 3. *c.* 127.

Westmorland, to wit. } To the constable of ———, in the said county.

WHEREAS A. I. *clerk, rector of the parish church of ——— in the said county, hath complained unto us* J. P. *and* K. P. *esquires, two* [or *unto me* J. P. *one*] *of his majesty's justices of the peace for the said county, that* A. O. *of ———, in the parish of ——— aforesaid, in the county aforesaid, yeoman, being a person commonly called a quaker, hath refused to pay unto him the said* A. I., *or to compound for, the tithes and other rights, dues, and payments belonging to the church of ——— aforesaid, and justly due to him the said* A. I. *from him the said* A. O.; *These are therefore to require you forthwith to summon the said* A. O. *to appear before us* [or, *me and such other of his majesty's justices of the peace for the said county as may be present*] *at the house of ——— in ———, in the said county, on* Saturday *the ——— day of this present month of ———, at the hour of ——— in the forenoon of the same day, to answer unto the said complaint. And be you then there to certify what you shall have done in the premises. Given under our hands and seals* [or, *my hand and seal*] *at ——— in the said county, the ——— day of ———, in the ——— year of the reign of ———.*

G. (G) Order for Quakers' Tithes, on Stats. 7 & 8 *W. c.* 34. 1 *G.* 1. *st.* 2. *c.* 6. and 53 *G.* 3. *c.* 127.

Westmorland, to wit. } *WHEREAS complaint hath been made unto us ———, two of his majesty's justices of the peace for the said county, by* A. I. *vicar of the parish of ——— in the said county, that* A. O. *of the parish of ——— aforesaid, in the county aforesaid, being a person commonly called a quaker, hath refused to pay to or to compound with him the said* A. I. *for his tithes, and other rights, dues, and payments belonging to the church of ——— aforesaid, and justly due unto him the said* A. I.; *We therefore the said justices, being neither of us patron of the parish church of ——— aforesaid, nor any way interested in any of the said tithes, rights, dues, or other payments, having duly summoned the said* A. O. *before us, and having also duly examined the truth of the said complaint upon oath, do find that there is justly due for the same from the said* A. O. *to him the said* A. I. *the sum of ———, and do order and appoint the aforesaid* A. O. *to pay or cause to be paid unto him the said* A. I. *the aforesaid sum of ———, and we do also order and appoint the aforesaid* A. O. *to pay or cause to be paid unto him the said* A. I. *the further sum of* 10*s. for such costs and charges concerning the premises as upon the*

merits of the cause do appear to us just and reasonable. Given under our hands and seals at ——— in the said county, the ——— day of ———, in the ——— year of the reign of ———.

(H) Distress for Quakers' Tithes, on Stats. 7 & 8 *W. c.* 34., 1 *G.* 1. *st.* 2. *c.* 6. and 53 *G.* 3. *c.* 127.* H.

Westmorland, to wit. } To the constable of ———.

WHEREAS upon the complaint of A. I. *vicar of the parish church of ——— in the said county,* A. O. *of ——— in the parish aforesaid, in the county aforesaid, yeoman, being a person commonly called a quaker, hath been duly summoned to appear before ———,* J. P. *and* K. P. *esquires, two of his majesty's justices of the peace in and for the said county, to be examined for non-payment of his tithes and other rights, dues, and payments, belonging to the church of ——— aforesaid, due unto him the said* A. I. *from him the said* A. O.; *and whereas the said justices, upon examination thereof, have, by writing under their hands and seals, ordered him the said* A. O. *to pay unto the said* A. I. *the sum of ——— for such his tithes and other rights, dues, and payments, as aforesaid, and moreover the sum of ten shillings for the charges of him the said* A. I. *in recovering the same, making in the whole the sum of ———; and whereas it appeareth unto me* J. P. *esquire, being one of the said justices, and also being one of the two next justices to the parish church of ——— aforesaid, in the county aforesaid, not being patron of the said church, nor any way interested in any of the said tithes, or other rights, dues, or payments, that the said* A. O. *hath had due notice of the said order, but hath refused and doth refuse to pay, and hath not paid the said sum of ———, nor any part thereof; these are therefore to authorise and command you that you do forthwith levy the aforesaid sum of ———, by distress and sale of the goods and chattels of him the said* A. O., *and out of the money arising from such sale that you do pay or cause to be paid unto him the said* A. I. *the said sum of ———, and thereout also deduct your necessary charges of distraining; and if any overplus shall remain, after such payment and deduction as aforesaid; that you do render the same unto him the said* A. O. *Given under my hand and seal at ——— in the said county, the ——— day of ———, in the ——— year of the reign of ———.*

Tobacco.

[12 C. 2. c. 34. — 15 C. 2. c. 7. — 22 & 23 C. 2. c. 26.]

BY stat. 12 *C.* 2. *c.* 34. § 1. No person shall plant any tobacco, on pain of forfeiting the same, or the value thereof, or 40*s.* for every rod or pole of ground planted with it; half to the king and half to him that shall sue in any court of record. And besides the said penalty, by stat. 15 *C.* 2. *c.* 7. § 18. he shall moreover for- **12 C. 2. c. 34. Planting tobacco.** **15 C. 2. c. 7.**

feit 10*l.* for every rod or pole; one-third to the king, one-third to the poor, and one-third to him that shall sue in like manner.

22 & 23 C. 2. c. 26. 5 G. 1. c. 11.

And by stat. 22 & 23 *C.* 2. *c.* 26. § 2. (which by stat. 5 *G.* 1. *c.* 11. is continued along with the act of tonnage and poundage of stat. 12 *C.* 2. *c.* 4.) the justices shall, a month before every sessions, issue their warrants to all high and petty constables, to search what tobacco is planted, cured, or made, and by whom; and to make presentment in writing on oath at the next sessions of the names of such persons as have planted, cured, or made any tobacco, and what quantity of lands is or was planted, and who are the tenants and occupiers thereof (who shall also be deemed the planters).

§ 3. Which presentment shall be filed by the clerk of the peace in open sessions; and after such filing shall be a sufficient conviction in law of the persons presented, unless such person presented (having notice given to him of the presentment by delivery of a copy thereof to him, or leaving such copy at his usual place of abode in the presence of one witness, ten days before the next quarter sessions,) shall at the next sessions after such notice traverse the presentment and find sureties for prosecuting and trying such traverse at the quarter sessions next after such traverse entered or made.

§ 4. And all constables, bailiffs, and other public officers, shall, within 14 days after warrant from two justices, calling to their assistance whom they shall find necessary, pluck up, burn, consume, tear in pieces, and utterly destroy all tobacco seed, plant and leaf, planted, sowed, or growing in any field or ground.

§ 5. If any tobacco shall be suffered to grow, or be consumed in seed, plant, or leaf, by the space of 14 days after receipt of such warrant by the said constables or other officers; they shall for every offence forfeit 5*s.* for every rod, perch, or pole of ground planted with tobacco, and so proportionably for a greater or lesser quantity, half to the king, and half to him that shall sue.

§ 6. And if any shall refuse or neglect to assist the constable, he shall, on conviction before two justices, forfeit 5*s.* to be levied by warrant of the said justices by distress; and if no distress can be found, to be committed to the common gaol for one week.

§ 7. And if any person shall resist the constable or other person in the due execution hereof, he shall, on conviction before two justices, forfeit 5*l.* by warrant of the said justices by distress; and if no distress can be found, be committed to the common gaol for three months.

§ 9. But nothing herein shall hinder planting the same in gardens for physic or chirurgery, so as the quantity planted exceed not half a pole of ground. *See* stat. 12 *C.* 2. *c.* 34. § 4.

Concerning the exportation of *Tobacco Pipe Clay*, See *post*, tit. **Woollen Manufacture**; and for other matters relating to *Tobacco* and *Snuff*, see Vol. II. tit. **Excise**, *Tobacco*.

Torn.

See Vol. III. tit. Leet.

[9 H. 3. c. 35. Magna Charta, c. 17. — 52 H. 3. c. 10. — 13 Ed. 1. c. 13. — 1 Ed. 3. c. 17. — 31 Ed. 3. st. 1. c. 15. — 1 R. 3. c. 4. — 1 Ed. 4. c. 2.]

THE sheriff's torn is the king's court of record holden before the sheriff, for the redressing of common grievances within the county. 2 *Haw. c.* 10. § 2. — Torn, what.

And forasmuch as the sheriff did go in circuit twice every year throughout every hundred within the county, it was called *tour* or *tourn*, which signifieth a circuit or perambulation. 2 *Inst.* 70. — Meaning of the word.

By stat. 31 *Ed.* 3. *st.* 1. *c.* 15. The sheriff shall make his turn yearly, once within a month after *Easter*, and another time within a month after *Michaelmas;* and if he holds it in other manner, he shall lose his turn for the time; that is, the court so holden for that time shall be void, and the sheriff shall lose the profit thereof. 2 *Inst.* 71. — 31 Ed. 3. st. 1. c. 15. When to be holden.

And by stat. 9 *H.* 3. *c.* 35. he shall keep his turn no where but in due place and accustomed. — 9 H. 3. c. 35.

By the stat. of *Marlbridge*, 52 *H.* 3. *c.* 10. archbishops, bishops, earls, barons, men of religion or women, shall not need to come to the sheriff's turn, unless their presence be specially required for some cause, and if any have tenements in divers hundreds, they shall not need to come to the turn but in the bailiwicks where they dwell. *See* 2 *Haw. c.* 10. § 11. — 52 H. 3. c. 10. Who need not appear at the torn.

Tenants in ancient demesne are privileged by the common law from coming to this court unless they and their ancestors have time out of mind used to come to it. Also parsons of churches have the like privilege by the common law. 2 *Haw. c.* 10. § 11.

But all other persons, being above the age of 12 years, are bound to attend at such courts, in order to make enquiry of all common grievances, and also to give security to the public for their good behaviour, by taking an oath to be faithful to the king, and to observe his laws, and also by incorporating themselves into some free pledge or tithing, which formerly signified a certain number of families living together in the same precinct, the masters whereof were every one of them mutually bound for each other, and punishable for the default of any member of any such family in not appearing to answer for himself on any accusation made against him. 2 *Haw. c.* 10. § 2. — Who are to appear at the torn.

By stat. 1 *R.* 3. *c.* 4. No bailiff, or other officer, shall return or impannel any person upon an inquisition in the torn, but such as be of good name and fame, and have 20*s.* a-year freehold within the shire, or 26*s.* 8*d.* customary or copyhold; on pain of 40*s.* and the sheriff other 40*s.* half to the king, and half to him that will sue; and an indictment otherwise taken shall be void. — 1 R. 3. c. 4. Jurors in the torn.

But if the party except not to it upon his arraignment, he is concluded by that omission. 2 *Hale*, 70.

13 Ed. 1. st. 2. c. 13.

And by stat. 13 *Ed.* 1. *st.* 2. *c.* 13. The jury shall put their seals to their inquisitions.

1 Ed.3. c.17. Indictments to be indented.

By stat. 1 *Ed.* 3. *c.* 17. Indictments in the torn shall be by roll indented, one part to remain with the indictors, and the other with him that taketh the inquest.

Distress and sale.

It seems to be settled at this day that a distress is incident of common right to every fine and amerciament in the torn; and that the offender's goods may be distrained in any lands within the precinct of the court, or in the highway; and that the goods distrained may be sold. But the bailiff must have a special warrant to make distress. 2 *Haw. c.* 10. § 25.

Or the fine may be recovered by action of debt. *Id.* § 31.

Within what time offences are cognisable in the torn.

But no offence is cognisable in the torn, unless it arise since the holding of the last court. *Id.* § 50.

Traverse.

It seems to be agreed, that a presentment in the torn of any offence within the jurisdiction of the court, being neither capital nor concerning any freehold, subjects the party to a fine or amerciament, without any traverse. *Id.* § 76.

9 H.3. c.17. Indictment to be certified to the sessions. 1 Ed.4. c.2.

By *Magna Charta,* 9 *H.* 3. *c.* 17. The sheriff is restrained in his torn from hearing and determining indictments of felonies; yet the sheriffs did commonly make out process or precepts in nature of a *capias* to arrest the parties: but by stat. 1 *Ed.* 4. *c.*2. their power of making out process upon these indictments is taken away as well in cases of indictments of felony as other misdemeanors within their cognisance; but they are to deliver all such indictments and presentments to the next sessions, who are to make out process thereupon, and hear and determine them. 2 *Hale*, 71.

And the estreats of the fines thereupon shall be enrolled, and by indenture be delivered to the sheriff, to the use of him that was sheriff at the time of the indictment so taken in the torn as aforesaid.

Constables chosen in the torn.

The constables of common right are to be chosen and sworn in the torn or leet. 2 *Haw. c.* 10. § 37.

Transportation.

[39 El. c. 4. — 18 C. 2. c. 3. — 4 G. 1. c. 11. — 6 G. 1. c. 23. — 16 G. 2. c. 31. — 24 G. 3. sess. 2. c. 56. — 30 G. 3. c. 47. — 56 G. 3. c. 63. — 5 G. 4. c. 13. c. 14. c. 84. — *The following acts are also recited, but are either expired or repealed;* 16 G. 2. c. 15. — 8 G. 3. c. 15. — 19 G. 3. c. 74. — 25 G. 3. c. 46. — 28 G. 3. c. 24. — 43 G. 3. c. 15. — 55 G. 3. c. 156. — 56 G. 3. c. 27. — 59 G. 3. c. 101. — 1 & 2 G. 4. c. 6. — 4 G. 4. c. 47. — 4 G. 4. c. 64.; and see repeals of such parts of several acts as relate to transportation, p. 539. 541.]

EXILE and *transportation* are punishments unknown to the *common law* of *England;* and whenever the latter is inflicted, it is either by the choice of the criminal himself to escape a capital punishment, or it is imposed by the express direction of some *modern* act of parliament; for no power on earth, except the authority of parliament, can send a subject of *England,* no, not even a criminal, out of the land against his will. 1 *Blac. Com.* 137. 3 *P. Wms.* 37. & 460. 4 *Haw.* 7*th edit. c.* 33. *p.* 297.

39 Eliz. c.4.
18 C.2. c.3.

Exile is said to have been first introduced as a punishment in the reign of *Elizabeth*, when a statute [39 *Eliz. c.* 4.] enacted "that such rogues as were dangerous to the inferior people should be banished the realm." And the first statute by which *transportation* is authorised is 18 *C.* 2. *c.* 3. which gives a power to the *judges* at their discretion either to execute or *transport* to *America* for life certain notorious thieves and spoil-takers in the counties of *Northumberland* and *Cumberland*. 1 *Blac. Com.* 137. *n.* (1.). See also stats. 22 *C.* 2. *c.* 5. and 6 *Ev. Col. Stat. Part* V. *Cl.* xxv. (G), *p.* 852, 853. 1*st. ed.* & 2*d ed. p.* 287. (*a.*)

Transportation is now, however, become the common sentence of criminals under several statutes.

4 G.1. c.11. Transportation for larceny.

By stat. 4 *G.* 1. *c.* 11. where any person or persons shall be convicted of grand or petit larceny, or any felonious stealing or taking of money or goods and chattels, either from the person or the house of any other, or in any other manner, and who by law shall be entitled to the benefit of clergy, and liable only to the penalties of burning in the hand or whipping (except persons convicted for receiving or buying stolen goods, knowing them to be stolen,) it shall and may be lawful for the court before whom they were convicted, or any court holden at the same place, (or holden at any other place for the same county, &c. by stat. 6 *G.* 1. *c.* 23. § 1. with the like authority,) if they think fit, instead of ordering any such offenders to be burned in the hand or whipped, to order that such offenders shall be sent to some of H. M.'s colonies and plantations in *America*, for the space of seven years, and to convey and transfer them to the use of any person who shall contract for such transportation. 6 G. 1. c. 23.

Persons transporting themselves voluntarily.

§ 5. Where any person of the age of 15, and under 21, shall be willing to be transported, and to enter into any service in any of H. M.'s plantations in *America*, it shall be lawful for any merchant or other to contract with him for such service not exceeding eight years; provided such person come before the lord mayor or a justice of the peace, if the contract be in *London*, or before two justices if elsewhere, and before him or them acknowledge such consent, and sign the contract in his or their presence, and with his or their approbation. And then it shall be lawful for such merchant or other to transport such person, and keep him according to the contract; which said contract and approbation of such magistrate or magistrates, with the tenor of such contract, shall be certified by such magistrate or magistrates to the next sessions, to be registered by the clerk of the peace without fee. See stat. 5 *G.* 4. *c.* 84. § 22. *post*. p. 537.

Contract to be certified to the sessions.

6 G. 1. c. 23.

Stat. 6 *G.* 1. *c.* 23. makes different provisions respecting contracts and security for transportation of offenders, and for the punishment of those who return from transportation before the end of their term, which are repealed by stat. 5 *G.* 4. *c.* 84. § 29. p. 539.

By § 5. Persons rescuing, &c. offenders from the custody of

(a) But *justices in sessions* had long previously been authorized to *transport* "rogues, vagabonds, and sturdy beggars, duly convicted and adjudged to be incorrigible." See stat. 13 & 14 *C.* 2. *c.* 12. § 23. now repealed by stat. 5 *G.* 4. *c.* 83. § 1. See *post*, tit. Vagrants.

those who have contracted for their transportation, are guilty of felony without benefit of clergy. (*a*)

16 G. 2. c. 31. Aiding any felons in an attempt to escape from transportation.

By stat. 16 *G.* 2. *c.* 31. § 3. "If any person shall be aiding or assisting to any felon to *attempt* to make his escape from on board any boat, ship, or vessel, carrying felons for transportation, or from the contractor for the transportation of such felons, his assigns or agents, or any other person to whom such felon shall have been lawfully delivered in order for transportation," every person so offending shall be guilty of felony, and transported to *America* for seven years. See Vol. I. tit. Escape.

By § 4. the prosecution must be commenced within a year after the offence committed.

16 G. 2. c. 15.

Stat. 16 *G.* 2. *c.* 15. imposed the punishment of death without benefit of clergy on felons, &c. who, having been ordered to be transported, or having agreed to transport themselves for life or years, were afterwards at large within *G. B.* before the expiration of the term; and stat. 8 *G.* 3. *c.* 15. imposed a like punishment for the same offence when committed by persons, who being excluded from clergy, had been reprieved, and had received mercy on condition of transportation to *America* for life or years; but both these acts are repealed by stat. 5 *G.* 4. *c.* 84. § 29. and see § 22. p. 537.

8 G. 3. c. 15.

Place of transportation.

These statutes (*viz.* 6 *G.* 1. *c.* 23. 16 *G.* 2. *c.* 15. 8 *G.* 3. *c.* 15.) relating generally to the transportation of convicts, applied only to their transportation to the continent of *America*; and it appears to have been determined that where any particular statute, imposing the punishment of transportation, enacted that a convict should be transported for seven years, without saying to what place, it should be understood to mean to *America*. *Aickles's case*, 1 *Leach*, 394. But *America* having at length separated from its connection with *G. B.*, the punishment of felons and other offenders by transportation to that country was attended with many difficulties; and some different regulations were found necessary.

19 G. 3. c. 74. (*now expired.*) Convicts liable to be transported to *America* may be transported to any parts *beyond the seas.* All laws, statutes, &c. with regard to transportation to *America*, and being at large afterwards before the expiration of the sentence, shall be in force with

Therefore, by stat. 19 *G.* 3. *c.* 74. § 1. It was enacted that when any persons are convicted in *England* or *Wales* of grand or petit larceny, or any other crime punishable by transportation to *America*, the court may, if it thinks fit, order them to be transported to any parts beyond the seas, either in *America* or elsewhere, not exceeding such terms as they were liable to be transported for to H. M. colonies in *America*; and by § 2. when any such person so convicted shall, in consequence thereof, be ordered to be transported to any parts beyond the seas; or if H. M. shall extend the royal mercy to any offender convicted or attainted of any felony, by which he is excluded from clergy, upon the condition of transportation to any parts beyond the seas as aforesaid, "then and in any such cases all laws, statutes, usages, and customs now in force, with regard to the transportation of criminals to *America*, and their punishment for being afterwards at large, within any part of the kingdom of *G. B.* before the expiration of the several terms for which they were ordered to be transported, or had

(*a*) The substance of this section being incorporated, and its objects more effectually provided for by stat. 5 *G.* 4. *c.* 84. § 22. *post*, p. 537. it is deemed unnecessary to insert it more at length in this place.

agreed to transport themselves, and particularly the several provisions contained in stats. 4 *G.* 1. *c.* 11. 6 *G.* 1. *c.* 23. 16 *G.* 2. *c.* 15., and 8 *G.* 3. *c.* 15. shall take place, be in force, and enure, with regard to the transportation of all such offenders, to any parts beyond the seas, and with regard to their punishment for being afterwards at large in this kingdom before the expiration of their respective terms, in like manner as if the same had been repeated and specially inserted in this act." (*a*)

19 G. 3. c. 74. — regard to transportation *beyond the seas*, or being at large afterwards before the expiration of the sentence.

It appears to have been a matter of difficulty to find proper places beyond the seas for the purposes of transportation, and therefore, stat. 24 *G.* 3. *sess.* 2. *c.* 56. § 1. authorised the removal of convicts liable to transportation to temporary places of confinement in *England* or *Wales*.

24 G. 3. sess. 2. c. 56. Places of confinement in England and Wales.

The provisions of this statute, so far as they related to the removal of offenders to temporary places of confinement, were only to continue to the 1st of *June*, 1787, and to the end of the next session of parliament; but they were afterwards continued by different acts, and ultimately repealed by stat. 55 *G.* 3. *c.* 156. § 1. with a saving for proceedings commenced under the act 24 *G.* 3. before stat. 55 *G.* 3. *c.* 156. This act of 55 *G.* 3. was, however, by § 19. to continue only till the 1st of *May*, 1816; and stat. 24 *G.* 3. *c.* 56. would therefore have been in existence again after *that* time; but stat. 55 *G.* 3. *c.* 156. is continued so far as relates to the repeal of stat. 24 *G.* 3. *c.* 56. by stat. 56 *G.* 3. *c.* 27. § 1. till 1st of *May*, 1821. (§ 21.) Stat. 56 *G.* 3. *c.* 27. was again continued by stat. 1 & 2 *G.* 4. *c* 6. for two years from 24th of *March*, 1821, to the end of the then next session of parliament, and is now expired; stat. 24 *G.* 3. *sess.* 2. *c.* 56. seems therefore revived. *Sed quære* if not superseded by stat. 5 *G.* 4. *c.* 84. and see § 10.? (*Note.* Stat. 28 *G.* 3. *c.* 24. § 4, 5. relating to the treatment of offenders removed under stat. 24 *G.* 3. sess. 2. *c.* 56. to temporary places of confinement, is positively repealed by stat. 5 *G.* 4. *c.* 84. § 29.) (*b*)

55 G. 3. c. 156.

(*a*) This act was only temporary, and contained a great many provisions (principally relating to the erection of penitentiary houses) which have been suffered to expire. (See stat. 24 *G.* 3. *sess.* 2. *c.* 56. § 18.) But the 1st and 2d sections, which are cited in the text, were continued by stats. 24 *G.* 3. *st.* 2. *c.* 56. § 18. 28 *G.* 3. *c.* 24. § 3. 34 *G.* 3. *c.* 60. § 1. 39 *G.* 3. *c.* 51. § 1. 42 *G.* 3. *c.* 28. § 1. 46 *G.* 3. *c.* 28. § 1. 53 *G.* 3. *c* 39. § 1. 54 *G.* 3. *c.* 30. § 1. and lastly by stat. 56 *G.* 3. *c.* 27. § 20. to the 1st *May*, 1821. See *Tyrw.* and *Tyn. Dig. of Stat.* p. 1541. pl. 14. *note.*

Account of stat 19 G. 3. c. 74.

(*b*) By stat. 24 *G.* 3. *sess* 2. *c.* 56. intituled, "*An act for the effectual transportation of felons and other offenders; and to authorise the removal of prisoners in certain cases; and for other purposes therein mentioned.*" Reciting, "that it is expedient to impower H. M., with the advice of his privy council, to appoint certain places, as well out of H. M.'s dominions as within the same, to which felons and other offenders may be transported, and to make other regulations for the more effectual transportation of such offenders;" it is enacted, that from and after the passing of this act, when any person at any session of oyer and terminer, or gaol delivery, or at any quarter or other general session of the peace, or at any great session for *Chester*, or shall be lawfully convicted of grand or petit larceny, or any other offence for which such person shall be liable to be transported, it shall be lawful for the court, or any subsequent court holden at any place for the same county, &c. respectively, with like authority, to order that such person shall be transported beyond the seas, for any term of years not exceeding the number of years or term for which such person is or are, or shall be liable by any law to be transported; and, in every such case, it shall be lawful for H. M., with the advice of his privy council, to declare and appoint to what place or places, part or parts beyond the seas, either within or elsewhere

24 G. 3. sess. 2. c. 56.

Any person convicted, in England or Wales, of any crime punishable by transportation, may, by the court, be ordered to be transported accordingly: and H. M. in

56 G. 3. c. 27.

Stat. 56 *G.* 3. *c.* 27. (which by § 21. was to continue only until the 1st *May*, 1821, but by stat. 1 & 2 *G.* 4. *c.* 6. is continued for two years from the 24th *March*, 1821, to the end of the then next session of parliament,) made many alterations and amendments in the laws relating to the transportation of offenders; provided for their removal to places of confinement in *England* and

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24 G. 3. sess 2. c. 56. council, may appoint to what place beyond the seas he shall be sent.

If H. M. should extend his mercy to any offender liable to the punishment of death, the court may order him to be transported.

Contractor to have a property in the service of the offender.

out of H. M.'s dominions, such felons or other offenders shall be conveyed or transported; and such court is hereby authorised to order such offenders to be transferred to the use of any person or persons, and his or their assigns, who shall contract for the due performance of such transportation; and when H. M., his heirs and successors, shall be pleased to extend mercy to any offender convicted of any crime by law excluded from the benefit of clergy, on condition of transportation to any place beyond the seas, either for life or years, and such intention of mercy shall be signified by one of H. M.'s principal secretaries of state, it shall be lawful for any court, having proper authority, to allow such offender the benefit of a conditional pardon, and (except in cases where such offender shall be authorised by H. M. to transport himself), to order the transfer of such offender to any person or persons who shall contract for the due performance of such transportation, and his or their assigns, for such and the same term of years for which any such offender shall have been ordered to be transported, or for such term of life or years as shall be specified in such condition of transportation as aforesaid; and such contractor shall have a property in the service of such offender, for such terms respectively; and when any offender hath been, or shall be convicted of any crime for which he is by law excluded the benefit of clergy, the judge, before whom such offender or offenders shall be convicted, or any justice of the K. B., C. P., or Baron of the Exchequer, in case the said offender shall have been tried at any court of oyer and terminer, or gaol delivery, in *England*, or any justice of *Chester* or *Wales*, in case the said offender shall be tried and convicted within any of their respective jurisdictions, may, on such intention of mercy as aforesaid being signified to him by one of the said principal secretaries of state, make an order for the immediate transportation of such offender or offenders, in the same manner as if such intention of mercy had been signified by one of the said principal secretaries of state during the continuance of the assizes or sessions at which such offender or offenders was or were condemned; and such order shall be considered as an order made at such assizes or sessions as aforesaid, and shall be as effectual, and have all the same consequences as any order for the transportation of any offender or offenders made by any justice of oyer and terminer, great sessions, or gaol delivery, for any county, city, liberty, borough, or place, during the continuance of the assizes or sessions.

Persons undertaking to transport offenders, to give proper security.

By § 2. The contractor shall, before any such offender shall be delivered over to him to be transported, give security that he will transport, or cause to be transported effectually, such offender to such place beyond the seas respectively, as shall be appointed by H. M. as aforesaid, and procure such evidence as the nature of the case will admit of the landing of such offender so transferred as aforesaid, in that place (death and casualties by sea excepted), and that he shall not be suffered to return to *G. B.* or *Ireland* by the wilful default of the person or persons so contracting as aforesaid, or of his or their assigns.

Court may appoint two justices for the county, &c. to contract for transportation of offenders, &c.

Securities for transportation to be by bond, in the name of the clerk of the peace, &c. who

By § 3. Such court as aforesaid may appoint two justices for the county, &c. where such offender shall have been convicted, who shall have power to contract with any person for the performance of the transportation of such offender, and to order such security to be taken as aforesaid; and also to cause such offender to be delivered, by the respective gaolers in whose custody he shall be, to the contractor, or to his assigns; which contracts and security shall be certified by the justices, who shall make and take the same to the next court to be holden with like authority for the said county, &c. to be filed and kept among the records of such court; and all securities for transportation shall be by bond, in the name of the respective clerks of the peace, or other clerks of the court, who shall prosecute such bonds in their own names; for which purpose, every such clerk of the peace, or clerk of the court, and his successors respectively, shall be deemed a body corporate, and shall have and be paid all such costs as they shall sustain, in any such suit as the general quarter sessions shall direct,

Wales, and their employment in such places; and also made their escapes, rescue, &c. punishable in the same manner as if they were confined in a gaol or prison. This act 56 *G.* 3. was amended by stat. 4 *G.* 4. *c.* 47. which enabled H. M. by order in council to direct convicts to be employed in any part of H. M.'s dominions out of *England*. Both acts 56 *G* 3. and 4 *G.* 4. are now expired. *See* stat. 5 *G.* 4. *c* 84 § 1 and § 13. p 530 and 531.

56 G 3. c.127.

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out of the public stock, and all monies recovered on such bonds shall be for the use of the respective county, &c. and be paid to their respective treasurers, to be put of the public stock, and all charges in or about making the contract, taking securities, and conveying felons and other offenders in order to be transported, shall be borne by each county, &c. for which the court was held which ordered such offenders to be transported, and the respective treasurers shall, by order of the quarter sessions, pay all such charges to the persons employed.

24 G. 3. sess. 2. c. 56 shall be deemed a body corporate.

By § 4. The person so contracting as aforesaid, and to whom any offenders shall be delivered in order to be transported, or any person or persons directed by the said justices (impowered to contract as aforesaid), or their assigns, may, in such manner as he shall think fit, carry and convey the said offenders in and through any county of *G. B.*, towards the sea port or place from whence they are to be transported. And if any person or persons shall rescue such offenders, or any of them, or assist them, or any of them, in making their escape from such person or persons as shall have them in their custody as aforesaid, he, she, or they shall be adjudged guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy.

Persons contracting to transport offenders, may carry them through any county to the sea port.

Penalty on rescuing them, &c.

By § 5. If any offender who shall be so ordered by any such court as aforesaid to be transported beyond the seas, or who shall agree to transport himself or herself on certain conditions, either for life or years, to any place appointed by H. M. in manner aforesaid, shall be afterwards at large within any part of the kingdom of *G. B.* or *Ireland*, without some lawful cause, before the expiration of the term for which such offender shall have been ordered to be transported, or shall have agreed to transport himself, every such offender being at large as aforesaid, being thereof lawfully convicted, shall suffer death as in cases of felony, without clergy; and such offender may be tried either before justices of assize, oyer and terminer, great sessions, or gaol delivery for the county, &c. where such offender shall be apprehended, or from whence he or she was ordered to be transported; and the clerk of the assize, clerk of the peace, or other officer or clerk of the court having the custody of the records where such orders of transportation shall be made, shall, at the request of the prosecutor, or any other person on H. M.'s behalf, make out and give a certificate in writing, signed by him, containing the effect and substance only, omitting the formal part, of every indictment and conviction of such offender, and of the order for his or her transportation, to the justices of assize, &c. where such offender shall be indicted, (not taking for the same more than 2s. 6d.) which certificate shall be sufficient proof of the conviction and order for the transportation of such offender; and whoever shall discover and prosecute to conviction of felony without benefit of clergy, any such offender so being at large as aforesaid, shall be entitled to a reward of 20*l.* for every such offender so convicted, and shall have the like certificate, without fee, as any person may be entitled to for apprehending and prosecuting to conviction persons who have committed any robbery upon the highway: provided nevertheless, that H. M., his heirs and successors, may pardon and dispense with such transportation, and allow of the return of any such offender or offenders to the kingdom of *G. B.*

If any person ordered for transportation, &c. shall be found at large in G. B. or Ireland, before the expiration of his term, he shall suffer death.

Before whom such offenders may be tried.

Persons discovering and prosecuting such offenders, entitled to a reward of 20*l* and a certificate, &c.

By § 6. That from and after the passing of this act, it shall be lawful for H. M. from time to time, by an order in writing, to be notified by a principal secretary of state, or for any three or more of such of H. M.'s justices of the peace acting in and for the county, &c. in which any gaol shall be situated, as shall be authorised by H. M. under his sign manual, to direct the removal of any male offender who shall be under sentence of death, but reprieved during H. M.'s pleasure, or under sentence or order of transportation, and who, having been examined by an experienced surgeon or apothecary, shall appear free from any putrid or infectious distemper, and fit to be removed from the gaol or prison in which such offender shall be confined, to such place of confinement within

H. M. impowered to order, or to authorise three justices of peace to order the removal of male prisoners under sentence of death, &c. from

5 G.4. c.84. By stat. 5 G. 4. c. 84. intituled "*An act for the transportation of offenders from* Great Britain," after reciting, that "the several laws in force for regulating the transportation of offenders from *Great Britain* will expire at the end of the present session of parliament: and it is expedient that the laws relative to that subject should be revised and consolidated into one act:" it is enacted, by § 1. "That

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24 G. 3. sess. 2. c. 56. any gaol in England or Wales.

England or *Wales*, either at land, or on board any vessel in the river *Thames* or any navigable or other river, or within the limits of any port of *England* or *Wales*, as H. M., or any three of such justices, authorised as aforesaid, shall from time to time appoint, under the management of any overseer or overseers to be appointed by H. M., or any three or more of such justices authorised as aforesaid; and every offender who shall be so removed shall continue in the said place of confinement, or be removed to and confined in any other such place or places as aforesaid, as H. M., or any three or more of such justices, authorised as aforesaid, from time to time shall appoint, until such offender shall be transported according to law, or by the expiration of the term of such transportation, or otherwise, shall be entitled to his liberty, or until H. M., or any three or more of such justices, so authorised as aforesaid, shall direct the return of such offender to the gaol from which he shall have been so removed; and the sheriff or gaoler having the custody of any offender whose removal shall be ordered in manner aforesaid, shall, with all convenient speed after receipt of the notification of any such order, convey, or cause to be conveyed, every such offender to the place appointed, and there deliver him, together with a certificate, containing his christian name, surname, and age, and also the offence for which, and the court in which he was convicted, and the purport of his or her sentence, to such overseer or overseers as aforesaid, who shall give a proper receipt in writing to the sheriff or gaoler for the discharge of such sheriff or gaoler.

Gaoler to deliver offenders according to such orders, with a proper certificate.

Gaoler's fees, and expences of removal, to be paid by the county, &c.

By § 7. All fees on the delivering out of custody of any such offender so ordered to be removed, as have usually been paid, and would have been due to the sheriff or gaoler in case such offender had been removed in order to have been transported, and all reasonable expences which the sheriff or gaoler shall incur in every such removal, shall be paid by the county, &c. for which the court in which the offender was convicted shall have been held; and the sheriff or gaoler shall receive the money due for such fees and expences from the treasurer of such county, &c. such fees and expences being first allowed by the order of the quarter or other general sessions of the peace, who are hereby required to make such order as shall be just in that behalf.

Overseers to whom such prisoners are delivered, to have the same powers over them as gaolers, &c.

By § 8. After the removal of any offender under this act, the overseer who shall have the custody of him shall, during the term of such custody, have the same powers over him as are incident to the office of a sheriff or gaoler and in like manner be answerable for any escape of such offender; and also, during such custody, shall feed and clothe, and keep him to labour at such places, and under such directions as H. M., or any three or more of such justices, so authorised as aforesaid, shall from time to time, by any order to be directed to such overseer or overseers for their instruction, appoint.

Time of imprisonment to be deemed part of the term of transportation.

By § 9. The time during which any offender shall have continued in gaol under sentence of transportation, or being removed under the provisions aforesaid, shall continue confined by virtue this of act, shall be reckoned in discharge or part satisfaction of the term of his transportation.

Overseers may inflict moderate punishment for misbehaviour,

By § 10. If any offender shall, during such custody under this act, be guilty of any misbehaviour or disorderly conduct, it shall be lawful for such overseer, having the custody of such offender, to inflict such moderate punishment as may be inflicted by law on persons committed to a house of correction; and if any such offender shall break from, or unlawfully escape from the custody of such overseer, or if any person shall rescue, or attempt to rescue, or assist in rescuing, any such offender from such custody, or shall convey, or cause to be conveyed, any disguise, instrument, or arms to such offender, every such offence shall be punishable in the same manner as if such offender had been confined in a gaol or prison, in the custody of the sheriff or other gaoler, for the crime of which such offender shall have been convicted. See stat. 5 G. 4. c. 84. § 22. p. 537.

Overseers to make returns of

By § 11. The overseers of the several places of confinement to be appointed by virtue of this act shall from time to time make returns, specifying the names

this act shall take effect on the last day of this present session of parliament; and that on and from that day, all things remaining to be done, touching the punishment, imprisonment, correction, removal, transportation, discipline, employment, diet, and clothing of persons sentenced or ordered to transportation or banishment from any part of *G. B*, under any acts heretofore, or now in force, or

5 G 4 c 84. Commencement of act, under the provisions of which all persons already sentenced

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of every person in their custody, the offence of which he or she shall have been guilty, the court before which he or she shall have been convicted, and the sentence of such court, together with his age and bodily state, and his behaviour whilst in custody, and also the names of such offenders who shall have died whilst in such custody, or shall have escaped, or have been lawfully discharged from the same, which returns shall be made, on the first day of every term, to H M 's court of K B at *Westminster*, on the oath of the person or persons making the same, such oath to be made before the said court, or any commissioner authorised to take affidavits in the same

24 G 3 sess 2 c 56. prisoners to K B the first day of every term.

By § 12 reciting, "that there are several persons confined in county and city gaols in *England* and *Wales* under sentences and orders made by one or more justice or justices of peace at their sessions, or otherwise, upon convictions in a summary way, without the intervention of a jury, it is enacted, that it shall be lawful for any justice of assize or great sessions, or any two or more justices of the peace within whose jurisdiction such gaol is situate, to remove any such person or persons to any house of correction within the said jurisdiction, there to be confined and to remain in execution of such sentence or order

Justice of assize, &c. may remove prisoners committed by justices of peace.

By § 13 If any offender hath already been ordered to be transported to any part beyond the seas, or if any order shall at any time hereafter be made for the transportation of any offender, and cannot be conveniently executed with respect to the place in such order mentioned, it shall be lawful for the K B, or for the court before which any such person hath been convicted, or any court holden for the same county, &c having like authority, or (in the vacation time, and out of term) for any two justices of K B, C P, or barons of exchequer of the degree of the coif, to order that such offender shall be transported to any other part or place beyond the seas, appointed by H M for the transportation of such offenders in the like manner, and for the same term of years as such offender shall be liable to be transported to the place mentioned in the original sentence or order for his or her transportation, and such order shall be considered as made at the same time, and shall be as effectual to every intent and purpose, and shall have all the same consequences, in every respect, as the original order for the transportation of such offender, and such offender shall be transferred, conveyed, and made over, to any person who will contract for the performance of such transportation, and to his or their assigns, in like manner as if such offender had been transported to the place mentioned in the original order of transportation, and such contractor and his assigns, by virtue of such order of transfer as aforesaid, shall have a property in the service of the said offender, for the remainder of the term for which the offender was originally ordered to be transported, and in case such offender, so ordered for transportation, shall be afterwards at large within any part of *G B*, without some lawful cause, before the expiration of the term for which such offender has been ordered to be transported, every such offender being thereof lawfully convicted, shall suffer death as in cases of felony, without benefit of clergy, and shall be tried before such judges, and in such manner, and the same evidence made use of, for his or her conviction, as is or shall be directed by the laws now in being, or hereafter to be made, for the trial of other offenders found at large within this kingdom before the expiration of the term for which they were ordered to be transported, and whoever shall discover, and prosecute to conviction of felony without benefit of clergy, any such offender so being at large within this kingdom as aforesaid, shall be entitled to a reward of 20*l* for every such offender so convicted, and shall have the like certificate, without fee or reward, as any person may be intitled to for the apprehending and prosecuting to conviction persons who have committed any robbery upon the highway

If offenders cannot conveniently be transported to the place mentioned in their sentence, the K B, &c may order them to be transported to any other place they shall think proper.

Offenders returning before the expiration of their term, to suffer death

20*l* reward for prosecuting such offenders

By § 14 The expences of carrying this act into execution, as far as the same relates to the removal of prisoners convicted, and remaining in custody under sentence of death, and respited during H M 's pleasure, or under sentence or order of transportation to other places of confinement, and which are not other-

Expences of executing this act, relative to the removal of

5 G.4. c.84.

or ordered for transportation shall be placed.

pardoned on condition of being transported under any such acts, shall be continued, done, and completed under the provisions of this act; and that all sentences and orders for transportation; all orders in council, and other orders, warrants, instructions, directions, appointments, authorities, contracts, and securities, made, issued, or given under any of the said acts, and in force at the time of the commencement of this act, shall continue in force under and by virtue of this act, unless and until they shall be revoked or superseded.

Offenders adjudged for transportation to be transported under this act.

§ 2. Enacts, "That from and after the commencement of this act, every person convicted before any court of competent jurisdiction in *G. B.*, of an offence for which he or she shall be liable to be transported or banished, shall be adjudged and ordered to be transported or banished beyond the seas, for the term of life or years for which such offender shall be liable by any law to be transported or banished; and every sentence of transportation or banishment passed, or to be passed on any offender in any court of competent jurisdiction in *G. B.*, and every order for transportation or banishment made or to be made in pursuance of the sentence of any such court or other competent authority, shall subject the offender to be conveyed beyond the seas under provisions of this act; and whenever H. M. shall be pleased to extend mercy to any offender convicted of any crime for which he or she is or shall be excluded from the benefit of clergy, upon condition of transportation beyond the seas, either for the term of life, or any number of years, and such intention of mercy shall be signified by one of H. M.'s principal secretaries of state to the court before which such offender hath been or shall be convicted, or any subsequent court with the like authority, such court shall allow to such offender the benefit of a conditional pardon, and make an order for the immediate transportation of such offender; and in case such intention of mercy shall be so signified to the judge or justice before whom such offender hath been or shall be convicted, or to any judge of H. M.'s court of K. B. or C. P., or to any baron of the exchequer of the degree of the coif in *England*, such judge, justice, or baron shall allow to such offender the benefit of a conditional pardon, and make an order for the immediate transportation of such offender, in the same manner as if such intention of mercy had been signified to the court during the term or session in or at which such offender was convicted; and such allowance and order shall be considered as an allowance and order made by the court before which such offender was convicted, and shall be entered on the records of the same court by

Power for subsequent court, &c. to allow conditional pardon in cases where H. M. extends mercy to the offender.

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24 G. 3. sess. 2. c. 56. prisoners, &c. to be laid annually before parliament.

wise provided for, shall be annually laid before both houses of parliament, and shall be provided for in the next supplies to be granted to H. M. by parliament.

By § 15. Persons prosecuted for executing this act, may plead the general issue; and on obtaining a verdict or judgment on demurrer, shall recover treble costs, and though plaintiff obtain a verdict, he shall not have costs, unless the judge certify his approbation of the verdict.

Limitation of actions.

By § 16. All actions, &c. shall be laid in the county and place where the fact was committed, and shall be commenced within six calendar months after the fact committed.

Repeal of 24 G.3. sess. 1. c. 12.

By § 17. Stat. 24 *G.* 3. *sess.* 1. *c.* 12. (intituled, *An act to authorise the removal of prisoners in certain cases, and to amend the laws respecting the transportation of offenders*), is repealed, except with regard to prisoners who have been removed by virtue thereof.

the proper officer thereof, and shall be as effectual to all intents and purposes, and have the same consequences as if such allowance and order had been made by the same court during the continuance thereof; and every such order, and also every order made by the court of justiciary in *Scotland* for the transportation of any offender, whose sentence of death shall be remitted by H. M., shall subject the offender to be conveyed beyond the seas under the provisions of this act." 5 G.4. c.84.

§ 3. Enacts, "That it shall be lawful for H. M. by and with the advice of his privy council, from time to time, to appoint any place or places beyond the seas, either within or without H. M.'s dominions, to which felons and other offenders under sentence or order of transportation or banishment shall be conveyed; and that when any offenders shall be about to be transported or banished from *G. B.*, one of H. M.'s principal secretaries of state shall give orders for their removal to the ship to be employed for their transportation, and shall authorize and empower some person to make a contract for their effectual transportation to some of the places so appointed, and shall direct security to be given for their effectual transportation, in the manner herein-after mentioned."

H. M. may appoint places of transportation.

Secretary of state to authorize persons to make contracts for the transportation of offenders, &c.

By § 4. "The sheriff or gaoler receiving such order of removal shall by virtue thereof forthwith remove every offender to whom the same shall apply, and who, having been examined by an experienced surgeon or apothecary, shall appear to be free from any putrid or infectious distemper, and fit to be transported to the ship employed for his or her transportation, and there deliver every such offender to the contractor, together with a true copy, attested by such sheriff or gaoler, of the caption and order of the court by which each such offender was sentenced or ordered for transportation, containing the sentence or order of transportation of each such offender, by virtue whereof he or she shall be in the custody of such sheriff or gaoler; and also a certificate specifying concisely the description of his or her crime, his or her age, whether married or unmarried, his or her trade or profession, and an account of his or her behaviour in prison before and after trial, and the gaoler's observations on his or her temper and disposition, and such information concerning his or her connexions and former course of life as may have come to the gaoler's knowledge; and such contractor shall give a receipt in writing to the sheriff or gaoler, for the discharge of such sheriff or gaoler."

Sheriffs or gaolers, on receiving orders for removal of offenders for transportation, to deliver them over to the contractor, if free from distemper.

§ 5. Enacts, "That every such contractor, with two sureties, shall, before any such offender shall be delivered to him to be transported, give security by bond to H. M., that he will effectually transport, or cause to be transported, every offender included in his contract, to such place beyond the seas as shall be specified in the contract, and procure from the governor of the colony, or other person or persons to whom he shall be directed by one of the principal secretaries of state to deliver such offender a certificate of the landing of such offender in that place whereto he or she shall be ordered to be transported (death and casualties by sea excepted): and that such offender shall not be suffered to return to any part of the U. K., by the wilful default of such contractor, or of any person employed by him."

Persons undertaking to transport offenders to give proper security.

§ 6. Enacts, "That if any such offender shall be guilty of misbehaviour or disorderly conduct on board of the ship in which he or

For punishment of transports

5 G.4. c.84.

misbehaving on the voyage.

she shall be transported, it shall be lawful for the surgeon or principal medical officer for the time being of such ship, to inflict or cause to be inflicted on such misbehaving or disorderly offender such moderate punishment or correction as may be authorized by the instructions which he may receive from one of H. M.'s principal secretaries of state: provided always, that no such punishment or correction shall be so inflicted, unless the master or principal officer for the time being of such ship shall first signify his approbation thereof in writing under his hand; and every such punishment or correction, together with the particulars of the offence for which the same is inflicted, and such written approbation as aforesaid, shall on the same day, in all cases, be entered by such master or principal officer as aforesaid, upon the log book of the ship, under a penalty of 20*l.* for every neglect to make such entry, to be recovered to the use of the informer, by bill, plaint, or information, in any court of record in *England*, or in one of the supreme courts of *New South Wales* or *Van Dieman's Land*."

Secretary of state may give the custody of offenders transported in king's ships, without security being given for their transportation.

§ 7. Provides and enacts, "That whenever the transportation of any such offender shall take place in any ship belonging to H. M., it shall be lawful for one of the principal secretaries of state, by warrant under his hand, to nominate some person or persons who shall have the custody of such offender during the voyage, and thereupon such offender may be delivered to such nominee or nominees, without any contract or security being required or given for the effectual transportation of such offender; and every such nominee shall have the like power of punishing misbehaviour and disorderly conduct in such offender during the voyage, as is hereby given to the surgeon of a ship specially employed for the transportation of offenders."

Governor of the colony, &c. to have property in service of offender.

§ 8. Enacts, "That so soon as any such offender shall be delivered to the governor of the colony, or other person or persons to whom the contractor, or such nominee or nominees as aforesaid, shall be so directed to deliver him or her, the property in the service of such offender shall be vested in the governor of the colony for the time being, or in such other person or persons; and it shall be lawful for the governor for the time being, and for such other person or persons, whenever he or they shall think fit to assign any such offender to any other person for the then residue of his or her term of transportation, and for such assignee to assign over such offender, and so as often as may be thought fit; and the property in the service of such offender shall continue in the governor for the time being, or in such other person or persons as aforesaid, or his or their assigns, during the whole remaining term of life or years for which such offender was sentenced or ordered to be transported: provided always, that for the purposes of this act, every person administering the government of a colony, by whatever name or title he may be denominated, shall be deemed to be the governor thereof."

Not to interfere with king's prerogative.

§ 9. Nothing in this act contained shall in any manner affect H. M.'s royal prerogative of mercy."

H. M. to appoint places of confinement of offenders in England.

By § 10. "It shall be lawful for H. M. from time to time, by warrant under his royal sign manual, to appoint places of confinement within *England* or *Wales*, either at land, or on board vessels to be provided by H. M. in the river *Thames*, or some other river, or within the limits of some port or harbour of *England* or

Wales, for the confinement of male offenders under sentence or order of transportation, which shall be under the management of a superintendant and overseer to be appointed by H. M.; and that it shall be lawful for one of H. M.'s principal secretaries of state to direct the removal of any male offender who shall be under sentence of death, but who shall be reprieved, or whose sentence shall be respited during H. M.'s pleasure, or who shall be under sentence or order of transportation, and who, having been examined by an experienced surgeon or apothecary, shall appear to be free from any putrid or infectious distemper, and fit to be removed from the gaol or prison in which such offender shall be confined, to any of the places of confinement so appointed; and every offender who shall be so removed shall continue in the said place of confinement, or be removed to and confined in some other such place or places as aforesaid, as one of H. M.'s principal secretaries of state shall from time to time direct, until such offender shall be transported according to law, or shall become entitled to his liberty, or until one of H. M.'s principal secretaries of state shall direct the return of such offender to the gaol or prison from which he shall have been removed; and the sheriff or gaoler having the custody of any offender whose removal shall be ordered in manner aforesaid, shall, with all convenient speed, after the receipt of any such order, convey or cause to be conveyed every such offender to the place appointed, and there deliver him to such superintendant or overseer, together with a true copy, attested by such sheriff or gaoler, of the caption and order of the court by which such offender was sentenced or ordered for transportation, containing the sentence or order of transportation of each such offender, by virtue whereof he shall be in the custody of such sheriff or gaoler; and also a certificate, specifying concisely the description of his crime, his age, whether married or unmarried, his trade or profession, and an account of his behaviour in prison before and after his trial, and the gaoler's observations on his temper and disposition, and such information concerning his connexions and former course of life as may have come to the gaoler's knowledge; and such superintendant or overseer shall give a receipt in writing to the sheriff or gaoler, for the discharge of such sheriff or gaoler." 5 G. 4. c. 84.

§ 11. Enacts, "That it shall be lawful for H. M. to appoint one fit and able person to be superintendant of the said places of confinement; and in case it shall be deemed expedient, it shall be lawful for H. M. also to appoint one fit and able person to be assistant or deputy to such superintendant, at one or more of the said places of confinement, and to be constantly resident at or near the place or places to which he shall be appointed; and also one fit and able person to be overseer of each such place of confinement, who, with a sufficient number of officers and guards, shall constantly reside therein; and such superintendant shall personally visit and inspect such places of confinement four times in every year, or oftener if occasion shall require, and shall distinctly examine into the state of such places of confinement, the behaviour and conduct of the respective assistants or deputies, overseers, officers, and guards, the treatment and condition of the prisoners, and the amount of the several earnings, and the expences attending every such place of confinement, and shall, at least twice in every year, make a faithful report of the same to one

Appointment of superintendant of such places of confinement, &c.

5 G.4. c.84.

of H. M.'s principal secretaries of state, who shall cause such report to be laid before both houses of parliament at the beginning of every session; and such superintendant shall distinguish in such report, the amount of the earnings and expences at each of such places of confinement, and shall state the average number of prisoners confined therein, and the number of days' labour done by such prisoners, distinguishing the work of artificers, and of any other superior labourers, from that of common labourers; and such superintendant shall also, in matters of extreme necessity, make a special report thereof to one of H. M.'s principal secretaries of state, who may, and is hereby authorised, to afford such redress or provide such regulations as he shall deem proper; and such superintendant, assistants or deputies, and overseers, shall continue in office during H. M.'s pleasure, and shall receive such salaries as one of H. M.'s principal secretaries of state shall appoint; and such superintendant shall be paid such travelling and other reasonable expences as shall be incurred by him in discharge of his duty."

For cleansing and purifying and clothing offenders.

By § 12. "Whenever any offender shall be brought to any such place of confinement as aforesaid, in pursuance of the powers of this act, he shall be washed, cleansed, and purified, and the clothes in which he shall be then clothed shall be burnt, if necessary, or otherwise shall be preserved and taken care of for him by the overseer, and re-delivered to him upon his quitting it, or sold for his benefit, and the produce thereof accounted for to him by the overseer; and when such offender shall be finally discharged, such other decent clothing, as shall be judged necessary and proper by the superintendant, shall be delivered to such offender by the overseer, and also such sum of money for his immediate subsistence, as the superintendant shall think proper, so as such sum shall not in any case exceed 3*l.*"

H. M. by order in council, may direct convicts to be employed in any part of H. M.'s dominions out of England, under the management of the superintendant and overseer.

§ 13. Enacts "that it shall be lawful for H. M., by any order or orders in council, to declare his royal will and pleasure, that male offenders convicted in *G. B.*, and being under sentence or order of transportation, shall be kept to labour in any part of H. M.'s dominions out of *England*, to be named in such order or orders in council; and that, whenever H. M.'s will and pleasure shall be so declared in council, it shall be lawful for one of H. M.'s principal secretaries of state to direct the removal and confinement of any such male offender, either at land or on board any vessel to be provided by H. M., within the limits of any port or harbour in that part of H. M.'s dominions which shall be named in such order in council, under the management of the said superintendant, and of an overseer to be appointed by H. M. for each such vessel or other place of confinement; and every offender who shall be so removed, shall continue on board the vessel or other place of confinement to be so provided, or any similar vessel or other place of confinement to be from time to time provided by H. M., until H. M. shall otherwise direct, or until the offender shall be entitled to his liberty.

Superintendant to make returns of prisoners to the secretary of state, on the 1st of January.

§ 14. Enacts, "That the said superintendant shall from time to time make returns, specifying the name of every person in custody in each of such places of confinement, the offence of which he shall have been guilty, the court before which he shall have been convicted, and the sentence of such court, together

with his age and bodily state, and his behaviour whilst in custody; and also the names of such offenders as shall have died whilst in such custody, or shall have escaped, or have been lawfully discharged from the same; which returns shall be made on the first day of *January*, *April*, *July*, and *October* in every year, to one of H. M.'s principal secretaries of state, on the oath of the overseer of each place of confinement, such oath to be made before a justice of the peace." 5 G. 4. c. 84.

April, July, and October, yearly.

§ 15. Enacts, "That after the removal of any offender under this act, the superintendant and overseer who shall have the custody of him, shall, during the term of such custody, have the same powers over him as are incident to the office of a sheriff or gaoler, and shall in like manner be answerable for any escape of such offender; and if any offender shall, during such custody, be guilty of any misbehaviour or disorderly conduct, the superintendant or overseer shall be authorised to inflict, or cause to be inflicted on him, such moderate punishment or correction as shall be allowed by one of H. M.'s principal secretaries of state; and such superintendant or overseer shall also, during such custody, see every offender fed and clothed according to a scale of diet and clothing, to be fixed on and notified in writing by one of H. M.'s principal secretaries of state to the superintendant; and shall keep such offender to labour at such places, and under such regulations, directions, limitations, and restrictions, as by such secretary of state shall from time to time be prescribed; and in case of the absence of any such superintendant or overseer, or of the vacancy of his office, his duties or powers shall be discharged and exercised in all respects by the officer or person on whom the command of the place of confinement shall devolve."

Power and duties of superintendant and overseers.

§ 16. Enacts, "That it shall be lawful for such superintendant, and he is hereby authorised, in every such place of confinement as aforesaid, either at land or on board any vessel to be provided as aforesaid, and also in every place wherein any offenders under his superintendance shall be employed to labour, to act in every respect as a justice of the peace, as if he had been named in the commission of the peace, and had been duly qualified to act as a justice of the peace for the county or place in which any such place of confinement shall be, or any such offender shall be employed to labour."

Superintendant to act as a justice of the peace.

§ 17. After reciting that "by the laws in force in some parts of H. M.'s dominions not within the U. K., offenders convicted of certain offences are liable to be punished by transportation beyond the seas, and other convicts adjudged to suffer death in such parts of H. M.'s dominions have received or may receive H. M.'s most gracious pardon upon condition of transportation beyond the seas, and there may be no means of transporting such convicts to any of the places appointed by H. M. in council in that behalf, without first bringing them to *England*;" enacts, "That whenever any convict adjudged to transportation by any court or judge in any part of H. M.'s dominions not within the U. K., or any convict adjudged to suffer death by any such court or judge, and pardoned on condition of transportation, have been or shall be brought to *England* in order to be transported, it shall and may be lawful to imprison any such offender in any place of confinement provided under the authority of this act, until such convict

Convicts adjudged by courts out of the U. K. to transportation, and convicts pardoned on condition of transportation, may, when brought to England, be imprisoned and transported.

5 G.4. c. 84.

shall be transported, or shall become entitled to his liberty; and that so soon as every such convict shall be so imprisoned, all the provisions rules, regulations, clauses, authorities, powers, penalties, matters, and things aforesaid, concerning the safe custody, confinement, treatment, and transportation of any offender convicted in *G. B.*, shall extend and be construed to extend to every convict who may have been, or may be hereafter adjudged to transportation by any court or judge in any part of H. M.'s dominions not within the U. K., and to every convict adjudged by any such court or judge to suffer death, and pardoned on condition of transportation, and brought to *England* in order to be transported, as fully and effectually, to all intents and purposes, as if such convict had been convicted and sentenced at any session of gaol delivery holden for any county within *England*."

Convicts may be kept to hard labour in common gaol, and may be removed to house of correction.

By § 18. "It shall be lawful to keep to hard labour every offender under sentence or order of transportation, while he or she shall remain in the common gaol, if his or her health shall permit, and if one or more of the visiting justices of such gaol shall give a written order to that effect; and it shall be lawful for one of H. M.'s principal secretaries of state, if he shall think fit, to order that any such offender be removed from the common gaol to the house of correction, and there kept to hard labour."

Time of imprisonment to be deemed part of term.

By § 19. "The time during which any offender shall continue in any gaol or house of correction, or in any such place of confinement as aforesaid, under sentence or order of transportation or banishment, shall be taken and reckoned in discharge or part discharge of the term of his or her transportation or banishment."

Offenders may be carried through any county to the sea-port.

By § 20. "The sheriff or gaoler, and every person employed in the conveyance of any offender in order to be transported or banished, or to be imprisoned in any such place of confinement as aforesaid, or in the reconveyance of any offender from any such place of confinement to the gaol or prison from which he was removed, may, in such manner as he shall think fit, carry and secure such offender in and through any county of *G. B.*, towards the sea-port or place from whence he or she is to be transported or banished, or where he or she is to be confined, or to the gaol or prison to which he or she is to be reconveyed."

Expences of removal to be paid by the county where conviction took

By § 21. "In *England* and *Wales* all such fees, on the delivering out of custody of any such offender so ordered to be transported or removed, as have usually been paid to the sheriff or gaoler, and all reasonable expences which the sheriff or gaoler shall incur in every such removal, shall be paid by the county, riding, division, city, borough, liberty, or place for which the court in which the offender was convicted shall have been held; and the sheriff or gaoler shall receive the money due for such expences from the treasurer of such county, riding, division, city, borough, liberty or place; such fees and expences being first allowed by the order of the justices of the peace at their quarter or other general sessions of the peace, who are hereby required to make such order as shall be just in that behalf; and the clerk of the court shall be paid by such treasurer the same fee as hath been usually paid, and he is lawfully entitled to receive, for every order of transportation; and in *Scotland* all such fees and expences shall be paid in the same manner as has been heretofore practised."

By § 22. "If any offender who shall have been or shall be so sentenced or ordered to be transported or banished, or who shall have agreed or shall agree to transport or banish himself or herself on certain conditions, either for life or any number of years, under the provisions of this or any former act, shall be afterwards at large within any part of H. M.'s dominions, without some lawful cause, before the expiration of the term for which such offender shall have been sentenced or ordered to be transported or banished, or shall have so agreed to transport or banish himself or herself, every such offender so being at large, being thereof lawfully convicted, shall suffer death as in cases of felony without the benefit of clergy; and such offender may be tried either in the county or place where he or she shall be apprehended, or in that from whence he or she was ordered to be transported or banished (*a*); and if any person shall rescue, or attempt to rescue, or assist in rescuing or attempting to rescue, any such offender from the custody of such superintendant or overseer, or of any sheriff or gaoler or other person conveying, removing, transporting or reconveying him or her, or shall convey or cause to be conveyed any disguise, instrument for effecting escape, or arms to such offender, every such offence shall be punishable in the same manner as if such offender had been confined in a gaol or prison in the custody of the sheriff or gaoler, for the crime of which such offender shall have been convicted; and whoever shall discover and prosecute to conviction any such offender so being at large within this kingdom, shall be entitled to a reward of 20*l.* for every such offender so convicted."

5 G. 4. c. 84. Punishing person found at large before the expiration of his sentence.

Persons rescuing prisoners to be punished.

Reward for prosecuting to conviction persons at large, 20*l.*

By § 23. "In any indictment against any offender for being found at large contrary to the provisions of this or of any other act now made or hereafter to be made, and also in any indictment against any person who shall rescue or attempt to rescue, or assist in rescuing any such offender from such custody, or who shall convey or cause to be conveyed any disguise, instrument for effecting escape, or arms, to any such offender, contrary to the provisions of this or of any other act now made or hereafter to be made, whether such offender shall have been tried before any court or judge within or without the U. K., or before any naval or military court-martial, it shall be sufficient to charge and allege the order made for the transportation or banishment of such offender, without charging or alleging any indictment, trial, conviction, judgment, or sentence, or any pardon or intention of mercy, or signification thereof, of or against or in any manner relating to such offender."

Form of indictment against offenders found at large, or against persons rescuing, attempting to rescue, or assisting in rescuing prisoners.

By § 24. "The clerk of the court or other officer having the custody of the records of the court where such sentence or order of transportation or banishment shall have been passed or made, shall, at the request of any person on H. M.'s behalf, make out and give a certificate in writing, signed by him, containing the effect and substance only (omitting the formal part) of every indictment and conviction of such offender, and of the sentence or order for his or her transportation or banishment (not taking for the same more than 6*s.* 8*d.*), which certificate shall be sufficient evidence of the conviction and sentence or order for the transport-

Certificate of clerk of court of conviction and sentence, sufficient evidence.

(*a*) See also, as to the latter part of this §, stat. 6 G. 1. c. 23. § 5. *ante*, p. 462.

5 G.4. c.84.

ation or banishment of such offender; and every such certificate, if made by the clerk or officer of any court in *G. B.*, shall be received in evidence, upon proof of the signature and official character of the person signing the same; and every such certificate, if made by the clerk or officer of any court out of *G. B.*, shall be received in evidence, if verified by the seal of the court, or by the signature of the judge, or one of the judges of the court, without further proof."

Not to extend to persons banished under stat. 60 G. 3. c. 8.

By § 25. Nothing in this act contained respecting offenders under sentence or order of banishment, shall apply to persons adjudged to be banished under and by virtue of stat. 60 *G.* 3. *c.* 8., intituled *An act for the more effectual prevention and punishment of blasphemous and seditious libels.*

For protecting transported felons in the enjoyment of property acquired after conviction.

§ 26. After reciting that "It hath sometimes happened, that felons under sentence or order of transportation in *New South Wales* and the islands adjacent, have received from the governor or lieutenant governor thereof remissions, either absolute or conditional, of the whole or of some part of the term of their transportation, and have by their industry acquired property, in the enjoyment whereof it is expedient to protect them; and the like may happen in future in the same colony, and in other colonies to which felons may be transported under and by virtue of this act;" enacts, "That it shall and may be lawful for every felon under sentence or order of transportation, who hath received or shall receive any such remission as aforesaid from the governor or lieutenant governor of *New South Wales*, or from the governor or lieutenant governor of any other colony who may be authorised to grant the same, while such felon shall reside in a place where he lawfully may reside under such sentence, order, or remission, and under the provisions of this act, to maintain any action or suit for the recovery of any property, real, personal, or mixed, acquired by such felon since his or her conviction, and for any damage or injury sustained by such felon since his or her conviction, not only in the courts of the colony or place where such felon shall lawfully reside, but also in the courts of this kingdom, and of all other H. M.'s dominions; and if the defendant in any such action or suit shall plead or allege in his defence the plaintiff's or complainant's conviction of felony, and the plaintiff or complainant shall allege and prove that he or she hath received such remission as aforesaid, and is residing in some place consistent therewith and with the provisions of this act, a verdict shall pass and judgment shall be given for the plaintiff or complainant."

General issue.

By § 27. "If any suit or action shall be prosecuted in *England*, *Wales*, or *Ireland*, against any person for any thing done in pursuance of this act, the defendant may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done by the authority of this act; and if a verdict shall pass for the defendant, or judgment shall in any manner be given against the plaintiff, the defendant shall recover treble costs, and have the like remedy for the same as any defendants have by law in other cases; and notwithstanding a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the judge before whom the trial shall be had shall certify his approbation of the verdict."

By § 28. "All actions, suits, and prosecutions against any person for any thing done in pursuance of this act, shall be commenced within six calendar months after the fact committed, and not otherwise; and if the fact was done within the body of any county, it shall be laid and tried in that county, and no other; and if done out of the body of any county, it shall be laid and tried in the county of *Middlesex*, and not elsewhere." 5 G.4. c.84. Limitation of actions.

By § 29. From and after the commencement of this act (see § 1.) so much of stat. 4 *G.* 1. *c.* 11. as relates to contracts and security for the transportation of offenders, and to the punishment of those who return from transportation; and so much of stat. 6 *G.* 1. *c.* 23. as relates to the same objects; and stats. 16 *G.* 2. *c.* 15. and 8 *G.* 3. *c.* 15.; and so much of stat. 28 *G.* 3. *c.* 24., as relates to the transportation of offenders, and their removal to and imprisonment in temporary places of confinement (*viz.* § 4, 5.); and so much of stat. 31 *G.* 3. *c.* 46., as relates to the imprisonment and employment in hard labour of prisoners sentenced to transportation (*viz.* § 7.); and stat. 43 *G.* 3. *c.* 15., shall be repealed. The following acts and parts of acts repealed, viz. 4 G.1. c.11. in part. 6 G. 1. c.23. in part. 16 G.2. c.15. 8 G. 3. c. 15. 28 G.3. c. 24. in part. 31 G.3. c.46. in part. 43 G.3. c.15.

By stat. 59 *G.* 3. *c.* 101. § 1., after reciting stat. 56 *G.* 3. *c.* 27. § 6., it was enacted, that convicts adjudged, by courts out of *England*, to transportation, and convicts pardoned on condition of transportation, might, when brought to *England*, be imprisoned on board of ships provided for the purpose, &c. 59 G. 3. c. 101.

Stat. 25 *G.* 3. *c.* 46. provided for the more effectual transportation of male offenders in *Scotland*, and for the removal of prisoners reprieved during pleasure, or under sentence of transportation in *Scotland*, to temporary places of confinement: and for the punishment of offenders escaping, or being at large, before the expiration of their sentences, and of persons rescuing them, or assisting them to escape; and was continued for two years from 24th *March* 1821, to the end of the then next session of parliament. Afterwards stat. 4 *G.* 4. *c.* 47. authorised the employment on public works in the colonies of male offenders convicted in *G. B.*, and under sentence of transportation: but this stat. 4 *G.* 4. expired with stat. 56 *G.* 3. *c.* 27., on the last day of the session of 5 *G.* 4. A.D. 1824. See stat. 4 *G.* 4. *c.* 47. § 5. 25 G.3. c.46. Transportation of Scotch offenders. 4 G.4. c.47.

By stat. 59 *G.* 3. *c.* 101. § 2. Nothing in the act extended to *Scotland* and *Ireland*: and by § 3. it was continued in force till 1st of *May* 1821: and by stat. 1 & 2 *G.* 4. *c.* 6., for two years from 24th *March* 1821, to the end of the then next session of parliament. It is now *expired*: see stat. 5 *G.* 4. *c.* 84. § 1. p. 529. 59 G. 3. c. 101.

By stat. 56 *G.* 3. *c.* 63. which was passed for the purpose of regulating the *general penitentiary* for convicts, lately erected at *Millbank*, in the county of *Middlesex*, it is enacted, (§ 13.) that when the penitentiary shall be completed for the reception of convicts, the king, by an order in writing, to be notified by the principal secretary of state for the home department, may direct that any person under sentence or order of transportation for any offence committed in *England* or *Wales*, and who, having been examined by an experienced surgeon or apothecary, shall appear to be free from infectious distemper, and fit to be removed, shall be removed to the penitentiary, there to continue for five years, in case such convict shall be under sentence or order of transportation for seven years only; and for seven years, in case such convict shall 56 G.3. c.63. Convicts sentenced to transportation may be confined in the general *penitentiary* at *Millbank*, erected under 52 G.3. c.44.

56 G. 3. c. 63.

be under such sentence or order for fourteen years; and for ten years, in case such convict shall be under such sentence or order for life. And certain regulations are made (§ 14.) as to the time of confinement in the penitentiary, where the convicts have, previously to their removal thither, been kept confined in some other prison, during a part of their term of transportation. The statute subsequently makes provision respecting such convicts breaking prison or escaping, and respecting persons rescuing, or attempting to rescue them, or supplying means of escape.

Convicts confined in the penitentiary breaking prison or escaping, are to be punished by an addition of three years to the term of their confinement; and upon a second breach of prison or escape to be guilty of felony without clergy.

By § 43. it is enacted, "That if any convict who shall be ordered to be confined in the said *penitentiary*, shall, at any time during the term of such confinement, break prison, or escape from the place of his or her confinement, or in his or her conveyance to such place of confinement, or from the person or persons having the lawful custody of such convict, he or she so breaking prison or escaping, shall be punished by an addition of three years to the term for which he or she, at the time of his or her breach of prison or escape, was subject to be confined; and if such convict so punished by such addition to the term of confinement shall afterwards be convicted of a second escape or breach of prison, he or she shall be adjudged guilty of felony, without benefit of clergy."

Persons rescuing or attempting to rescue convicts.

Felony.

Officers permitting escape.

Supplying means of escape.

By § 44. it is enacted, "That if any person shall rescue any convict who shall be ordered to be confined within the said *penitentiary*, either during the time of his or her conveyance to the said penitentiary, or whilst such convict shall be in the custody of the person or persons under whose care and charge he or she shall be so confined; or if any person shall be aiding or assisting in any such rescue, every such person so rescuing, aiding, or assisting, shall be guilty of felony, and may be ordered to be confined in the said penitentiary, for any term not less than one year, nor exceeding five years; and if any person having the custody of any such convict as aforesaid, or being employed by the person having such custody as a keeper, under-keeper, turnkey, assistant, or guard, shall voluntarily permit such convict to escape; or if any person whatsoever shall, by supplying arms, tools, or instruments of disguise, or otherwise, be in any manner aiding and assisting to any such convict in any escape, or in any attempt to make an escape, though no escape be actually made, or shall attempt to rescue any such convict, or be aiding and assisting in any such attempt, though no rescue be actually made, every such person so permitting, attempting, aiding, or assisting, shall be guilty of felony; and if any person having such custody, or being so employed by the person having such custody as aforesaid, shall negligently permit any such convict to escape, such person so permitting shall be guilty of a misdemeanor, and, being lawfully convicted of the same, shall be liable to fine or imprisonment, or to both, at the discretion of the court."

Felony.

Misdemeanor.

Punishment.

Trial for such offences.

§ 45. relates to the more ready and effectual trial and conviction of persons committing offences within the act; and provides that any convict so escaping, breaking prison, or being rescued, may be tried either in the county where he shall be apprehended and retaken, or in the county in which the said offence shall have been committed; and enacts that, in case of any prosecution for such escape, attempt to escape, breach of prison,

Evidence of the order of com-

or rescue, either against the convict escaping, or attempting to escape, or having broken prison, or being rescued, or against any other person or persons concerned therein, or aiding, abetting, or assisting the same, a copy properly attested, of the order of commitment to such penitentiary, shall, (after proof made that the person then in question before the court is the same that was delivered with such order,) be sufficient evidence to the court and jury that the person then in question was so ordered to such confinement.

56 G. 3. c. 63.

mitment to such penitentiary.

The mutiny acts also make provision for the punishment of persons returning from transportation after sentence by a court-martial. Thus by stat. 5 *G.* 4. *c.* 13. § 45., where a non-commissioned officer or soldier is convicted of desertion, and the court-martial shall not think the offence deserving of capital punishment, they may, instead of a corporal punishment, adjudge the offender to be transported for life, or a term of years; and in all cases wherein a capital punishment shall have been awarded by a court-martial, the king may order the offender to be transported as a felon for life, or for a term of years. And if such non-commissioned officer or soldier, or any person so transported in pursuance of such order from the king, "shall afterwards, (without leave from H. M., or from the governor or commanding officer of the place to which he shall have been transported,) return into, or be found at large, without leave as aforesaid, or other lawful cause, within any part of *G. B.* or *Ireland*, or in any of H. M.'s possessions abroad, other than the place to which he shall have been transported, before the expiration of the term limited by such sentence or order, and shall be duly convicted thereof, he shall suffer death as a felon, without benefit of clergy."

5 G. 4. c. 13. Mutiny act provides for the punishment of persons returning from transportation after sentence by a court-martial.

By § 9. Upon the sentence of transportation being notified in writing by the commander in chief, or, in his absence, by the adjutant general, to any justice of the king's bench, or common pleas, or baron of the exchequer, such justice or baron is to make an order for the transportation of the offender, upon the terms, and for the time which shall be specified in such notification: and such order, made under any act or acts of parliament, in force at the time of making such order, in relation to the transportation of offenders, and every act consequent upon such order are to be as effectual, and have all the same consequences, as any order made, or act done, under the authority of any act or acts of parliament in force at the time, in relation to the transportation of offenders, with respect to any offender in any such act or acts of parliament mentioned.

Provisions of a similar nature are contained in stat. 5 *G.* 4. *c.* 14. relating to the regulating of the *royal marine forces* while on shore.

5 G. 4. c. 14.

Stat. 31 *G.* 3. *c.* 46. § 7. enacted, that persons liable to be transported may be kept to hard labour in the county gaol, and was expressly saved in the repealing clause, stat. 4 *G.* 4. *c.* 64. § 1. but is now repealed by stat. 5 *G.* 4. *c.* 84. § 29.

31 G. 3. c. 46.

Upon the several statutes relating to the transportation of offenders, the following points have been resolved.

1st. That if an act of parliament direct that an offender shall be transported without saying to what place, it shall be under-

Where an act directs trans-

portation generally.

stood to the place where convicts are, at the time, legally transported, as formerly to *America*, and now to *Botany Bay*. By all the judges on a case reserved by Mr. J. *Bathurst*. *Vide* 1 *Haw*. 7*th Edit*. 407.

Prison day book.

2d. That the daily book kept by the clerk of the papers of a public prison, in which all commitments and discharges are registered, is good, and indeed the best evidence to prove the day from which the time of transportation takes place. The clerk of the papers is a public officer of the prison, and the law reposes such a confidence in public officers, that it *presumes* they will discharge their several trusts with accuracy and fidelity; and therefore whatever acts they do in discharge of their public duty may be given in evidence, and shall be taken to be *true*, under such a degree of caution as the nature and circumstances of each case may appear to require, except the *falsity* of them can be made to appear; for every presumption may be repelled by contrary evidence; but unless the truth of the entries in question be impeached they are admissable evidence. *R*. v. *Aikles*, *O. B. Sept. Sess*. 1785. 1 *Leach*, 390.

Identity on return from transportation before term expired.

3d. That if a convict, on his trial for returning from transportation before his time was expired, confess the fact, and acknowledge that *he is the man*, the court will record such confession, but that otherwise the record of the conviction must be produced, and evidence given of his identity. *O. B*. 1785. 1 *Haw*. 7*th Edit*. p. 408.

Sign manual promising a pardon on condition of leaving the kingdom for seven years.

4th. That if a convict be sentenced to transportation for seven years, and receive a sign manual promising him a pardon upon condition of his giving security to leave the kingdom within fourteen days from the date thereof, and not to return again for the space of seven years, and on his giving such security is discharged from prison; but neglect to transport himself within the fourteen days, he cannot be indicted for being unlawfully found at large before the term for which he received sentence of transportation had expired; for the sign manual and the recognizance entered into in consequence of it are good evidence that he was *lawfully* at large, although he had not substantially performed the condition on which the promise of pardon was granted. In this case the prisoner was referred to his original sentence of transportation. *Maximilian Miller's case*, *O. B. Jan. Sess*. 1771. 1 *Leach*, 74.

Being at large in *G. B.* after sentence of death, commuted for transportation for life.

5th. That a prisoner convicted of a capital crime, whose sentence is respited during the king's pleasure, and who, on having received a pardon on condition of transportation for life, is afterwards found at large in *G. B. without lawful cause*, shall, on his being indicted for returning from transportation and acquitted, be referred back to his original sentence. *R*. v. *Patrick Madan*, *O. B. Dec. Sess*. 1780. 1 *Leach*, 223.

Passing second sentence of transportation.

It is also decided that sentence of transportation may be a second time passed upon a prisoner, although the time for which he before received sentence of transportation be *unexpired*. *R*. v. *Bath and others*, *O. B. Feb. Sess*. 1787. 1 *Leach*, 441.

Offender transported is an attainted felon

Under stats. 4 *G*. 1. *c*. 11. and 8 *G*. 3. *c*. 15. (now *repealed* by stat. 5 *G*. 4. *c*. 84. § 29. *ante*, p. 539.) the mere transportation of an offender to the place appointed did not amount to an actual

pardon, but he still remained in the situation of an attainted felon, until he had served the period of transportation; the pardon was not complete until that of the service was also.

till he has served the period of transportation.

By stat. 30 *G.3. c.*47. intituled, "*An act for enabling H. M. to authorize his governor or lieutenant-governor of such places beyond the seas to which felons or other offenders may be transported, to remit the sentence of such offenders,*" it is enacted, § 1. That H. M. by commission under the great seal may authorise the governor or lieutenant-governor of any places to which any offenders may be transported, by an instrument in writing under the seal of the government in which such places are situated, to remit either absolutely or conditionally the whole or part of the term for which any such offenders shall be transported; and such instrument shall have the like force as if H. M. had signified his intention of mercy under his sign manual.

30 G.3. c.47. H. M. may authorise governor or lieutenant governor of New South Wales, &c. to remit sentences.

And by § 2. such governor, &c. shall transmit to one of the secretaries of state a duplicate under the government seal of each such instrument of remission; and the names of such offenders contained in such duplicate shall be inserted in the next general pardon that shall pass the great seal after the receipt of such duplicates.

Duplicates of instruments remitting sentences, shall be transmitted to secretary of state, &c.

Where an offender returns by permission of the governor of *New South Wales*, according to the provisions of stat. 30 *G.*3. *c.*47., he is only to have the same advantage as if H. M. had signified his intention of mercy under his sign manual, and is to have his name inserted in the next general pardon under the great seal; a return, therefore, under such circumstances, is not sufficient to restore him to all his rights and capacities, until such pardon is signified under the great seal. *Bullock* v. *Dodds*, 2 *B. & A.* 258.

Traverse.

[60 G.3. c.4.]

TRAVERSE took its name from the French *de traverse*, which is no other than *de transverso*, in Latin, signifying *on the other side;* because as the indictment on the one side chargeth the party, so he on the other side cometh in to discharge himself. *Lamb.* 540.

Traverse whence.

[The word *traverse* is only applied to an issue taken upon an indictment for a misdemeanor; and it should rather seem applicable to the fact of putting off the trial till a following sessions or assizes, than to the joining of issue; and therefore perhaps the derivation is from the meaning of the words *transverto*, which in barbarous Latin is to go over, *i. e.* to go from one sessions, &c. to another, and thus it is that the officer of the court asks the party whether he be ready to try then, or will traverse over to the next sessions, &c.; but the issue is joined immediately, by pleading not guilty.]

To traverse an indictment then, is to take issue upon the chief

Traverse, what.

matter thereof; which is the same as if one shall say, *to make contradiction*, or *to deny the point of the indictment.*

As in a presentment against a person for a highway overflowed with water, for default of scouring a ditch which he and they whose estate he hath in certain lands there have used to scour and cleanse, such person may traverse either the matter, to wit, that there is no highway there, or that the ditch is sufficiently scoured; or otherwise he may traverse the cause, to wit, that he hath not that land, or that he and they whose estate he hath, have not used to scour the ditch. *Lamb.* 541.

Form of traverse. And forasmuch as in the record of one traverse, there is at once discovered the style of the sessions, the indictment, the process to answer, the traverse itself, the verdict and judgment thereupon, the process of execution, the yielding of the parties, and the assessment of their fines, so that it alone may serve instead of all, it is judged requisite to insert the same as follows:

(Style of the sessions.) Somerset. *HERETOFORE, to wit, at the sessions of the peace at* Bridgewater *in the county aforesaid, on the* Tuesday *next before the feast of St.* Matthew *the apostle, in the* ——— *year of the reign of* ——— *by the grace of God of the united kingdom of* Great Britain *and* Ireland, *king, defender of the faith, before* J. P. *and* K. P. *esquires, and other their associates, justices of our said lord the king, assigned to keep the peace in the county aforesaid, as also to hear and determine divers felonies, trespasses, and other misdemeanors, in the same county committed, by the oath of twelve jurors it is presented that* John Long, *of* ——— R. M. *of* ——— *and* T. L. *of* ——— *with divers* **(The indictment.)** *others unknown, evil doers and disturbers of the peace of our said lord the king, in a warlike manner arrayed, joined and assembled, on the* ——— *day of* ——— *in the night of the same day, in the year aforesaid, with force and arms, to wit, with swords, staves, clubs, guns, and other arms, as well offensive as defensive, at* ——— *the close of one* W. Willet, (*called* B.) *unlawfully, riotously, routously broke and entered, and eight waggon loads of hay, to the value of* ——— *then and there being, of the goods and chattels of the said* W. W. *then and there unjustly and unlawfully took and carried away, against the peace of our said lord the king, and against the form of the statute in that case made and provided: whereupon it* **(Process to answer.)** *was commanded to the sheriff that he should not omit for any liberty within his bailiwick, but cause them to come to answer.* **(Traverse.)** *And afterwards, to wit, on the* Tuesday *aforesaid, next before the feast of St.* Matthew *the apostle, in the year aforesaid, before the aforesaid justices, came the aforesaid* J. L., R. M., *and* T. L. *in their proper persons, and having had the hearing of the indictment aforesaid, severally say that they are thereof not guilty, and of this they put themselves upon the country; and* Adam Martin, *who for our lord the king in this behalf prosecutes, in like manner doth the same. Therefore let there come thereupon a jury before the justices of our said* **(Jury.)** *lord the king, assigned to keep the peace in the county aforesaid, and also to hear and determine, &c. at the sessions of the peace at* Wells, *&c. on the* Tuesday *next after the* Epiphany *of our Lord, then next to be holden, and who are not of kin to the said* J. L., R. M., *and* T. L. *nor to any of them, to recognise upon their oath,*

whether the said J. L., R. M., *and* T. L. *are guilty of the crime charged in the said indictment; because as well the said* Adam Martin, *who prosecutes for the said lord the king in this behalf, as the said* J. L., R. M., *and* T. L. *have put themselves upon the said jury. The same day is given as well to the aforesaid* A. M. *who prosecutes, &c. as to the aforesaid* J. L., R. M., *and* T. L., *&c. To which sessions of the peace holden at* W. *aforesaid, in the county aforesaid, on the aforesaid day, &c. before* ——— *and their associates, justices of our said lord the king, assigned to keep the peace in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the same county committed, came as well the aforesaid* A. M. *who prosecutes, &c. as the aforesaid* J. L., R. M., *and* T. L. *in their proper persons. And the jurors aforesaid, by the sheriff of the county aforesaid for this impannelled, and demanded, to wit,* A. B. C. D., *&c. likewise did come, who to say the truth concerning the premises being tried and sworn, say upon their oath that the aforesaid* J. L., R. M. *and* T. L. *are guilty, and every of them is guilty of trespass, contempt, and riot aforesaid, in the indictment aforesaid above specified, in manner and form as against them is above supposed. Therefore it is considered by the court that the aforesaid* J. L., R. M., *and* T. L. *be taken to satisfy our lord the king of their fines, by occasion of the trespass, contempt, and riot aforesaid. Which* J. L., R. M., *and* T. L. *then and there present in court prayed that they to a fine with our said lord the king, by the occasion aforesaid, may be admitted; and therefore they put themselves severally upon the mercy of our lord the king. And the fine of the same* J. L. *by the justices aforesaid is assessed at* 3l. 6s. 8d., *and the fine of the same* R. M. *is assessed at* 20s., *and the fine of the same* T. L. *is assessed at* 5l., *of good and lawful money of* Great Britain, *to the use and behoof of our said lord the king.* Lamb. 543.

(Verdict.) (Judgment.) (Process of execution.) (Fine assessed

By stat. 60 *G.* 3. *c.* 4. "*to prevent delay in the administration of justice in cases of misdemeanor,*" after reciting that, "whereas great delays have occurred in the administration of justice, in cases of persons prosecuted for misdemeanours by indictment or information in H. M.'s courts of K. B. at *Westminster* and *Dublin*, and by indictment at the sessions of the peace, sessions of oyer and terminer, great sessions, and sessions of gaol delivery, in that part of *G. B.* called *England*, and in *Ireland* respectively, by reason that the defendants in some of the said cases have, according to the present practice of such respective courts, an opportunity of postponing their trials to a distant period, by means of imparlances in the said several courts of K. B., and by time being given to try in such respective courts of session;" for remedy thereof, it is enacted, "that where any person shall be prosecuted in H. M.'s court of K. B. at *Westminster*, or in H. M.'s court of K. B. in *Dublin* respectively, for any misdemeanor, either by information or by indictment there found or removed into the same respective courts, and shall appear in term time in either of the said courts respectively in person, to answer to such indictment or information, such defendant upon being charged therewith shall not be permitted to imparle to a following term, but shall be required to plead or demur thereto within four days from the time of his or her appearance; and in default of his or her pleading or demurring within four days as aforesaid, judg-

60 G. 3. c. 4.

Persons prosecuted in K. B. for misdemeanors, appearing in court, not permitted to imparle.

Judgment may be entered for want of plea.

60 G.3. c.4.

ment may be entered against the defendant for want of a plea; and in case such defendant shall appear to such indictment or information by his or her clerk or attorney in court, it shall not be lawful for such defendant to imparle to a following term, but a rule requiring such defendant to plead may forthwith be given, and a plea or demurrer to such indictment or information enforced, or judgment by default entered thereupon, in the same manner as might have been done, before the passing of this act, in cases where the defendant had appeared to such indictment or information by his or her clerk in court or attorney in a previous term.

Court may allow further time to plead.

§ 2. Provides and enacts, that it shall be lawful for the said respective courts, or for any judge of the same respectively, upon sufficient cause shewn for that purpose, to allow further time for such defendant to plead or demur to such indictment or information.

Persons in custody for misdemeanors, or held to bail, within twenty days before the session, shall plead to indictment unless a writ of certiorari be delivered.

§ 3. Enacts, that "where any person shall be prosecuted for any misdemeanour by indictment at any session of the peace, session of oyer and terminer, great session, or session of gaol delivery within that part of *G. B.* called *England*, or in *Ireland*, having been committed to custody, or held to bail to appear to answer for such offence twenty days at the least before the session at which such indictment shall be found, he or she shall plead to such indictment, and trial shall proceed thereupon at such same session of the peace, session of oyer and terminer, great session, or session of gaol delivery respectively, unless a writ of *certiorari* for removing such indictment into H. M.'s courts of K. B. at *Westminster* or in *Dublin* respectively, shall be delivered at such session before the jury shall be sworn for such trial."

Certiorari may be issued before or after indictment is found.

§ 4. Enacts, that such writ of *certiorari* may be applied for and issued before such indictment has been found, in the like cases, in the same manner, and upon the same terms and conditions, as if such writ of *certiorari* had been applied for after such indictment had been found.

In what cases such indictments may be tried at subsequent session.

§ 5. Enacts, that "where any person shall be prosecuted for any misdemeanor by indictment at any session of the peace, session of oyer and terminer, great session, or session of gaol delivery, within that part of *G. B.* called *England*, or in *Ireland*, not having been committed to custody, or held to bail to appear to answer for such offence twenty days before the session at which such indictment shall be found, but who shall have been committed to custody, or held to bail to appear to answer for such offence at some subsequent session, or shall have received notice of such indictment having been found twenty days before such subsequent session, he or she shall plead to such indictment at such subsequent session, and trial shall proceed thereupon at such same session of the peace, session of oyer and terminer, great session, or session of gaol delivery respectively, unless a writ of *certiorari* for removing such indictment into H. M.'s courts of K. B. at *Westminster* or in *Dublin* respectively, shall be delivered at such last-mentioned session before the jury shall be sworn for such trial, any law or usage to the contrary notwithstanding.

Not to prevent indictments found by a

§ 6. Provides and enacts, that nothing in this act contained shall extend to prevent any indictment, found by a grand jury of any city or town corporate, from being removed, at the prayer of

any defendant, for trial by a jury of the county next adjoining to the county of such city or town corporate, pursuant to the provisions of stat. 38 *G. 3. c. 52.*, and upon such removal, the defendant shall plead, and the trial shall be had according to the provisions of this act, in like manner as if such indictment had been originally found by a grand jury of such next adjoining county.

60 G. 3. c. 4.

grand jury of any city or town from being removed to an adjoining county to be tried. 38 G. 3. c. 52.

§ 7. Provides and enacts, that it shall be lawful for the court, at any session of the peace, session of oyer and terminer, great session, or session of gaol delivery respectively, upon sufficient cause shewn for that purpose, to allow further time for pleading to any such indictment, or for trial of the same.

Court may, on sufficient cause shewn, allow further time for pleading, &c.

§ 8. Enacts, that in all cases of prosecutions for misdemeanors, instituted by H. M.'s attorney or solicitor general, in any of the courts aforesaid, the court shall, if required, make order that a copy of the information or indictment shall be delivered, after appearance, to the party prosecuted, or his clerk in court or attorney, upon application made for the same, free from all expence to the party so applying: provided that such party, or his clerk in court or attorney, shall not have previously received a copy thereof.

In prosecutions by the attorney or solicitor general, copy of the information or indictment to be delivered to the party.

§ 9. Provides and enacts, that in case any prosecution for a misdemeanor instituted by H. M.'s attorney or solicitor general in any of the courts aforesaid, shall not be brought to trial within twelve calendar months next after the plea of not guilty shall have been pleaded therein, it shall be lawful for the court in which such prosecution shall be depending, upon application to be made on the behalf of any defendant in such prosecution, of which application twenty days' previous notice shall have been given to H. M.'s attorney or solicitor general, to make an order, if the said court shall see just cause so to do, authorising such defendant to bring on the trial in such prosecution; and it shall thereupon be lawful for such defendant to bring on such trial accordingly, unless a *nolle prosequi* shall have been entered in such prosecution.

In case such prosecution is not brought to trial within twelve calendar months, court may make an order thereon.

§ 10. Enacts, that nothing in this act contained shall extend to any prosecution by information in nature of a *quo warranto*, or for the non-repair of any bridge or highway.

Not to extend to quo warranto actions, &c.

Treason.

[3 Ed. 1. c. 15.—25 Ed. 3. st. 5. c. 2.—1 Mar. sess. 1. c. 1.—31 C. 2. c. 2.—7 W. 3. c. 3.—13 W. 3. c. 3.—6 Ann. c. 7.—7 Ann. c. 21.—17 G. 2. c. 39.—20 G. 2. c. 30.—6 G. 3. c. 53.—30 G. 3. c. 48.—36 G. 3. c. 7.—37 G. 3. c. 70.—39 & 40 G. 3. c. 93.—54 G. 3. c. 146.—57 G. 3. c. 6. c. 7.

TREASON, according to Lord *Coke*, is derived from *trahir*, to betray; and *trahison*, by contraction, *treason*, is the betraying itself. 3 *Inst.* 4.

Meaning of the word treason.

Treason, generally speaking, is intended, not of petit treason, but of high treason only. 1 *Hale*, 316.

Power of justices of the peace therein.

Notwithstanding that treason and misprision of treason are not within the letter of the commission of the peace, yet inasmuch as they are against the peace of the king and of the realm, any justice of the peace may, either upon his own knowledge, or the complaint of others, cause any person to be apprehended for any such offence. And such justice may take the examination of the person so apprehended, and the information of all those who can give any material evidence against him, and put the same in writing, and also bind over such who are able to give any such evidence to the K. B. or gaol delivery, and certify his proceedings to such court. 2 *Haw.* c. 8. § 34. *Hale's Sum.* 168. 1 *Hale*, 372.

Bail. 3 Ed. 1. c. 15.

And having committed the offender (for he is by no means bailable by justices of the peace, 3 *Ed.* 1. *c.* 15. 2 *Haw. c.* 15. § 44.) it may be advisable for him to send an account immediately of all the particulars to a secretary of state.

Treason by stat. 25 Ed. 3.

By stat. 25 *Ed.* 3. *st.* 5. *c.* 2. which Ld. *Hale* calls a *sacred* act; and Ld. *Coke* an excellent act, and the king who made it a *blessed* king, and the parliament a *blessed* parliament; all treasons which had been uncertain before were settled. Which act, by the 1 *Mar. sess.* 1. *c.* 1. is reinforced, and again made the only standard of treason; and all statutes, between the said statutes of the 25 *Ed.* 3. and 1 *Mar.* which made any offences high or petit treason, or misprision of treason, are abrogated; so that no offence is at this day to be esteemed high treason, unless it be either declared to be such by the said statute of the 25 *Ed.* 3. or made such by some statute since the 1 *Mar.*

And therefore I shall first consider such offences as are high treason within the said statute of the 25 *Ed.* 3., and then such as are made treason by statutes subsequent to the said statute of the 1 *Mar.*

The words of the statute of the 25 *Ed.* 3. as to this matter, are as follow:—

25 Ed. 3. st. 5. c. 2.

Whereas divers opinions have been before this time in what case treason shall be said, and in what not; [that is, what shall or shall not be said to be treason:] *the king, at the request of the lords and commons, hath made a declaration in the manner as hereafter followeth; that is to say, when a man doth compass or imagine the death of our lord the king, or of our lady his queen, or of their eldest son and heir; or if a man do violate the king's companion* (that is, his wife, 3 *Inst.* 9.) *or the king's eldest daughter unmarried, or the wife of the king's eldest son and heir; or if a man do levy war against our lord the king in his realm, or be adherent to the king's enemies in his realm, giving to them aid and comfort in the realm, or elsewhere; and thereof be probably* (proveablement, proveably) *attainted of open deed, by the people of their condition. And if a man counterfeit the king's great or privy seal, or his money; and if a man bring false money into the realm, counterfeit to the money of* England, *knowing the money to be false; and if a man slay the chancellor, treasurer, or the king's justices of the one bench or the other, justices in eyre, or justices of assize, and all other justices assigned to hear and determine, being*

in their places, doing their offices. And it is to be understood, that in the cases above rehearsed, that ought to be judged treason which extends to our lord the king, and his royal majesty.

And by the statute of the 1 *Mar. sess.* 1. *c.* 1., which Ld. *Hale* (1 *Hale*, 308.) calls another excellent law, *No act, deed, or offence being by act of parliament made treason, by words, writing, ciphering, deeds, or otherwise whatsoever, shall be adjudged to be treason, but only such as be declared by the said statute of the* 25 Ed. 3. And this (he says) at one blow laid flat all the numerous treasons at any time enacted since the 25 *Ed.* 3. **1 Mar. sess. 1. c. 1.**

Of open deed.] Ld. *Coke* (3 *Inst.* 14. 140.) seems to be of opinion, upon the said act of the 25 *Ed.* 3. that bare *words* are not a sufficient *overt act*, or *open deed*, whereby to convict a person of treason; but that they are misprision of treason only. So also Ld. *Hale* (1 *Hale*, 111. 118. and elsewhere throughout) seemeth to think that words, unless put into writing, are not regularly an overt act. But Mr. *Hawkins* (1 *Haw. c.* 17. § 39.) argues the contrary, and amongst other reasons for his opinion, he observes that to charge a man with speaking treason is unquestionably actionable, which could not be, if no words could amount to treason: also, that as in case of felony he who by command or persuasion induceth another to commit felony is an accessary in felony, so he who does the same in treason is a principal traitor (there being no accessaries in treason, but all being principals); and yet such person doth not act but by words. Nevertheless, at this day, it seems clearly to be agreed that by the common law and the statute of *Ed.* 3. words spoken amount only to a high misdemeanor, and no treason. 4 *Blac. Com.* 80. **Words.**

Several offences have by different statutes been made treason since the 1 *Mar.*

Those regarding the pretender, viz. 13 *W.* 3. *c.* 3. 6 *An. c.* 7., and 17 *G.* 2. *c.* 39. are no longer of any interest.

Offences in relation to the coin are made treason by many statutes; which are treated of in title Coin, Vol. I.

Also there are many offences made treason with regard to the popish usurped jurisdiction; which are treated of under title Popery, Vol. III.

In high treason, as hath been said before, there are no accessaries, but all are principals; and therefore whatsoever act or consent will make a man accessary to a felony before the act done, the same will make him a principal in case of high treason. 3 *Inst.* 9. 21. **Accessaries in high treason.**

By stat. 7 *W.* 3. *c.* 3. No person shall be prosecuted for high treason but within three years after the offence committed; except in the case of designing to assassinate the king's person. **7 W. 3. c. 3. Prosecution to be in three years.**

And by stat. 31 *C.* 2. *c.* 2. Persons committed for high treason shall be indicted the next term, or next assize; otherwise they shall be let to bail, unless it appear to the court, upon oath, that the witnesses for the king could not be produced in that time; and in such case they shall be indicted the second term or assize, or else discharged. **31 C. 2. c. 2. Trial to be the next term.**

By stat. 7 *W.* 3. *c.* 3. § 1. Persons indicted for high treason, whereby corruption of blood shall be made, or for misprision of such treason (except for counterfeiting the coin, the great seal, privy seal, privy signet or sign manual), shall have a copy of the **7 & 8 W. 3. c. 3. Copy of the indictment.**

7 & 8 W. 3. c. 3. indictment (but not the names of the witnesses) delivered to them five days before the trial.

Copy of the panel. § 7. And they shall have copies of the panel of the jurors delivered to them, two days before trial.

Process for witnesses. And shall have process of court to compel their witnesses to appear.

List of the witnesses. And moreover by stat. 7 *An. c.* 21. § 11. after the death of the person pretending to be king of *England* by the name of *James* the third, when a person is indicted for high treason, or misprision of treason, both a copy of the indictment, and lists of the jurors, and also of the witnesses, shall be delivered to the party indicted, ten days before the trial.

6 G. 3. c. 53. But by stat. 6 *G.* 3. *c.* 53. § 3. this shall not extend to any indictment of high treason for counterfeiting the coin, the great seal, privy signet, or the sign manual.

Counsel. And by stat. 7 *W.* 3. *c.* 3. such person shall have two such counsel as they shall desire assigned them by the court, who shall have access to them at reasonable times.

20 G. 2. c. 30. Likewise by stat. 20 *G.* 2. *c.* 30. persons impeached by the house of commons of high treason, whereby corruption of blood shall be made, or for misprision thereof, shall be admitted to make their full defence by two counsel, who shall be assigned for that purpose, in like manner as upon indictments and other prosecution.

Witnesses. By stat. 7 *W.* 3. *c.* 3. § 1. They shall be allowed to make their defence by witnesses on oath.

Two witnesses. § 2. And they shall not be attainted but on the oath of two witnesses, either both of them to the same overt act, or one of them to one and the other of them to another overt act of the same treason; unless they shall confess or stand mute, or refuse to plead, or challenge peremptorily above thirty-five of the jury.

39 & 40 G. 3. c. 93. Exception in cases of attempts on the king's person. See 1 East's P. C. 107 & 108. Stat. 39 & 40 *G.* 3. *c.* 93. reciting "that it is expedient that in cases of high treason in compassing or imagining the death of the king, and of misprision of such treason, where the overt act or acts of such treason alleged in the indictment shall be the assassination or killing of the king, or any direct attempt against his life, or any direct attempt against his person, whereby his life may be endangered, or his person may suffer bodily harm, the trial for such offence should not be different from trials for murder or wilful and malicious shooting; enacts, that in all cases of high treason in compassing or imagining the death of the king, and of misprision of such treason, where the overt act or acts of such treason which shall be alleged in the indictment shall be assassination or killing of the king, or any direct attempt against his life, or any direct attempt against his person, whereby his life may be endangered or his person may suffer bodily harm, the person or persons charged with such offence shall and may be indicted, arraigned, tried, and attainted in the same manner, and according to the same course and order of trial, in every respect, and upon the like evidence, as if such person or persons stood charged with murder: and none of the provisions contained in the several acts of the 7 *W.* 3. and 7 *Ann.* respectively, touching trials in cases of treason and misprision of treason respectively, shall extend to any indictment for high treason in compassing and imagining the death of the king, or for misprision of such treason, where the overt act or

acts of such treason alleged in the indictment shall be such as aforesaid: but upon conviction on such indictment, judgment shall be nevertheless given, and execution done, as in other cases of high treason. 39 & 40 G. 3. c. 93.

By stat. 54 *G.* 3. *c.* 146. "*to alter the punishment in certain cases of high treason,*" after reciting that whereas in certain cases of high treason, as the law now stands, the sentence or judgment required by law to be pronounced or awarded against persons convicted or adjudged guilty of the said crime, in such cases is, that they should be drawn on a hurdle to the place of execution and there be hanged by the neck, but not until they are dead, but that they should be taken down again, and when they are yet alive their bowels should be taken out and burnt before their faces, and that afterwards their heads should be severed from their bodies, and their bodies be divided into four quarters, and their heads and quarters to be at the king's disposal; and whereas it is expedient in the said cases of high treason, to alter the sentence or judgment now required by law, it is enacted that in all cases of high treason, in which, as the law now stands, the sentence or judgment ordained by law is as aforesaid, the sentence or judgment to be pronounced or awarded from and after the passing of this act against any person convicted or adjudged guilty shall be, that such person shall be drawn on a hurdle to the place of execution, and be there hanged by the neck until such person be dead; and that afterwards the head shall be severed from the body of such person, and the body, divided into four quarters, shall be disposed of as H. M. and his successors shall think fit. 54 G. 3. c. 146. **Form of sentence in case of high treason.**

§ 2. In case H. M. or his successors shall so think fit, H. M. or his successors, after such sentence or judgment shall be pronounced or awarded, may by warrant under his or their sign manual, countersigned by one of H. M.'s principal secretaries of state, declare it to be his or their will and pleasure, and may direct and order that such person as aforesaid shall not be drawn, but shall be taken in such manner as in the said warrant shall be expressed, to the place of execution, and that such person shall not be there hanged by the neck, but that instead thereof the head shall be there severed from the body of such person whilst alive, and in such warrant may direct and order how and in what manner the body, head, and quarters of such person shall be disposed of; and it shall be lawful for the sheriff or other person or persons to whom such warrant shall be addressed, and whom it shall concern, to carry the same into execution accordingly. **H. M. may alter sentence.**

The ancient judgment of a woman for high treason was to be drawn and burnt. 3 *Inst.* 211.

But by stat. 30 *G.*3. *c.*48. § 1. Women are not to be burned, but hanged. 30 G. 3. c. 48.

In the said judgment is implied forfeiture of lands and goods to the king, loss of dower, and corruption of blood. (*a*) 3 *Inst.* 211. **Forfeiture.**

By stat. 36 *G.* 3 *c.*7. § 1. If any person after the 18th *December*, 1795, during the natural life of H. M., and until the end of the **Treason by 36 G. 3. c. 7.**

(*a*) See stat. 54 *G.* 3. *c.* 145. title Attainder, Vol. I. page 237.

*36 G.3. c.7. next session of parliament after a demise of the crown, shall, within the realm or without, compass, imagine, invent, devise, or intend death or destruction, or any bodily harm, tending to death or destruction, maim, or wounding, imprisonment or restraint of the person of the king, his heirs and successors, or to deprive or depose him or them from the style, honour, or kingly name of the imperial crown of this realm, or of any other of H. M.'s dominions: or to levy war against H. M., his heirs, and successors, within this realm, in order by force or constraint to compel him or them to change his or their measures or counsels; or in order to put any force or constraint upon or to intimidate or overawe both or either house of parliament; or to move or stir any foreigner or stranger with force to invade this realm, or any other H. M.'s dominions under his obeisance, and such compassings, imaginations, inventions, devices, or intentions, or any of them, shall express, utter, or declare, by publishing any printing or writing, or by any overt act or deed, being convicted thereof upon the oaths of two witnesses, upon trial, or otherwise convicted or attainted by due course of law, such person shall be deemed a traitor, and shall suffer and forfeit as in cases of high treason.

57 G.3. c.6.

Provisions of recited act made perpetual.

By stat. 57 *G*.3. *c*.6. §1. after reciting stat. 36 *G*.3. *c*.7. §1. And that it is necessary and expedient that such of the provisions of the said act as would expire at the end of the next session of parliament after the demise of the crown should be further continued and made perpetual; it is enacted, That all and every the herein before recited provisions which relate to the heirs and successors of H. M., the sovereigns of these realms, shall be and the same are hereby made perpetual.

37 G.3. c.70. Endeavouring to seduce soldiers or sailors. Any person who shall attempt to seduce any sailor or soldier from his duty, or incite him to mutiny, &c. to suffer death.

By stat. 37 *G*. 3. *c*.70. "*for the better prevention and punishment of attempts to seduce persons serving in H. M.'s forces by sea or land, from their duty and allegiance to H. M., or to incite them to mutiny or disobedience,*" (made perpetual by 57 *G*.3. *c*.7.) § 1. it is enacted, that any person who shall maliciously and advisedly endeavour to seduce any person or persons serving in H. M's forces, by sea or land, from his or their duty and allegiance to H. M., or to incite or stir up any such person or persons to commit any act of mutiny, or to make, or endeavour to make, any mutinous assembly, or to commit any traitorous or mutinous practice whatsoever, shall, on being legally convicted of such offence, be adjudged guilty of felony, and shall suffer death, as in cases of felony, without benefit of clergy.

Trial in any county.

And, by § 2. any such offence, whether committed in *England* or on the high seas, may be tried before any court of oyer and terminer or gaol delivery for any county in *England*, as if the offence had been therein committed. Provided (§ 3.) that no person tried and acquitted, or convicted under this act, shall be liable to be tried again for the same offence or fact, as high treason or misprision of treason, nor shall this act prevent the trial of any person as for high treason or misprision of treason, who has not been tried for the same fact under this act.

Richard Fuller was indicted on the above act; and the indictment stated that the defendant, after the passing of the act, and whilst it was in force, to wit, on, &c. with force and arms, at, &c. " feloniously did maliciously and advisedly endeavour to seduce one *Matthew Lowe,* he the said *M. L.* then and there being a

person serving in H. M.'s forces by land, from his duty and allegiance to his said majesty; against the form of the statute," &c. The second count was, for that the defendant "feloniously did maliciously and advisedly endeavour to incite and stir up the said *M. L.*, he the said *M. L.* then and there being a person serving, &c. to commit an act of mutiny, and to commit traitorous and mutinous practices, against the form of the statute," &c. After conviction a question was reserved for the opinion of the judges, whether the indictment were good in this general form, or, whether it ought not to have stated how and by what acts the prisoner endeavoured to seduce the soldier? The case involving some difficulty, it was afterwards argued in the exchequer chamber before all the judges (except *Buller* J. who was indisposed), and all those who were assembled held the indictment to be sufficient. This opinion was grounded upon consideration of many precedents in *Tremaine* of the like general import, and on the nature of the offence itself, created by the act of parliament in the terms laid in the indictment. *Fuller's case, O. B. July*, 1797, *cor. Buller J.* 1 *East's P. C.* 92.

Petit Treason.

Moreover, there is another manner of treason when a servant slayeth his master, or wife her husband; or when a man secular or religious slayeth his prelate, to whom he oweth faith and obedience. 25 Ed. 3. st. 5. c. 2. Petit treason, what.

High treason is against the king, petit treason against the subjects. 3 *Inst.* 20.

By stat. 1 *Ed.* 6. *c.* 12. § 22. No person shall be convicted of petit treason, but on the oath of two witnesses, or confession.

The judgment against a man for petit treason is, that he shall be drawn to the place of execution, and there hanged by the neck till he be dead. 2 *Haw. c.* 49. § 5. Judgment.

And by stat. 30 *G.* 3. *c* 48. The judgment against a woman shall be the same as against persons convicted of wilful murder, as specified in 25 *G.* 2. c. 37. See Vol. II. title Homicide, p. 1042. 30 G. 3. c. 48.

The consequence of attainder is, forfeiture of lands (to the lord of the fee), and of goods; loss of dower; and corruption of blood. 2 *Haw. c.* 46. § 1. Forfeiture.

Although there can be no accessaries in high treason, yet in petit treason there may be accessaries both before and after. 3 *Inst.* 21. Accessary.

And accessaries before the fact are ousted of clergy by several statutes; but accessaries after the fact have their clergy in all cases of petit treason; for no statute takes it from them. 2 *Hale*, 342.

Though the indictment may be for murder only, it is considered as most proper to prefer an indictment for petit treason, because the judgment is different, and because a person indicted for petit treason is entitled to a peremptory challenge of thirty-five. *Swan's case, Fost.* 104. *et seq.* And this doctrine was acted upon by a very learned judge in a case of late occurrence. The prisoner was arraigned on the last day of the assizes, and after the grand jury had been discharged, upon an indictment charging her with the wilful murder of her sister; when *Lawrence* J., upon reading the depositions taken before the coroner, found that she had acted as a servant in her sister's family; upon which, after conferring

with the counsel for the prosecution, and citing the authority of *Foster* J., he refused to try her upon that indictment, and ordered her to be detained in prison; and that an indictment for petit treason should be preferred against her at the next assizes. *Case of Penelope Edwards, Stafford Sum. Ass.* 1805. *MS.*

Misprision of Treason.

Misprision, what.

Misprision cometh of the *French* word *mépris*, which properly signifieth neglect or contempt: and misprision of treason, in legal understanding, signifieth, when one knowing of any treason, though no party or consenter to it, yet conceals it, and doth not reveal it in convenient time. 3 *Inst.* 36. 1 *Hale*, 371.

Judgment.

The judgment of misprision of treason is, to be imprisoned during life, to forfeit all his goods for ever, and the profits of his lands during life. 3 *Inst.* 36.

Caution.

Every man, therefore, that knoweth a treason ought with all speed reveal it to the king, his privy council, or other magistrate. *Hale's Sum.* 127.

Misprision of petit treason.

But it seemeth that misprision of petit treason is not subject to the judgment of misprision of high treason, but only is punishable by fine and imprisonment, as in the case of misprision of felony. 1 *Hale*, 375.

For a very satisfactory treatise on the heinous crime of treason, see *East's P. C.*, Vol. I. *from page* 37 *to* 140.

Treasure found.

[4 Ed. 1. stat. 2.]

Treasure trove, what.

TREASURE trove, or treasure found, is where any money or coin, gold, silver, plate, or bullion, is found hidden in the earth, or other private place, the owner thereof being unknown; in which case, the treasure belongs to the king (or to some other by the king's grant or prescription): but if he that hid it be known, or afterwards found out, the owner and not the king is entitled to it. 1 *Blac. Com.* 295.

Also, if it be found in the sea, or upon the earth, it doth not belong to the king, but to the finder, if no owner appears. So that it seems it is the hiding, not the abandoning of it, that gives the king a property. *Ib.*

This difference arises from the different intentions which the law implies in the owner. A man that hides his treasure in a secret place evidently doth not mean to relinquish his property, but reserves a right of claiming it again when he sees occasion; and if he dies, and the secret also dies with him, the law gives it to the king in part of his royal revenue. But a man that scatters his treasure into the sea, or upon the public surface of the earth, is construed to have absolutely abandoned his property, and returned it into the common stock, without any intention of reclaiming it; and therefore it belongs, as in a state of nature, to the first occu-

pant or finder, unless the owner appear and assert his right, which then proves that the loss was by accident, and not with an intent to renounce his property. 1 *Blac. Com.* 295

Larceny cannot be committed of such things whereof no man hath any determinate property, though the things thenselves are capable of property, as of treasure trove, or wreck, till seized; though he that hath them in point of franchise may have a special action against him that takes them. 1 *Hale*, 510. Taking treasure trove, not felony.

The punishment for concealment of treasure trove is by fine and imprisonment. 3 *Inst.* 133. But finable.

And it belongeth to the coroner to inquire thereof. *Ib.* The coroner may inquire thereof.

Concerning which it is enacted by 4 *Ed.* 1. stat. 2. that a *coroner being certified by the king's bailiffs, or other honest men of the country, shall go to the places where treasure is said to be found.* And it is further enacted in the same statute, *that the coroner ought to enquire of treasure that is found, who are the finders, and likewise who is suspected thereof, and that may be well perceived, where one liveth riotously, haunting taverns, and hath done so of long time; hereupon he may be attached for this suspicion by 4 or 6, or more pledges, if they may be found.* 4 Ed. 1. st. 2.

Also, it seems to be agreed, that all seizures of treasure trove, belonging to the king, may be inquired of in the sheriff's torn. But it seems questionable, whether a prescription in a court leet to inquire of such seizure belonging to the lord of it, being a subject, be good or not, since it is against the general rule of the law for the leet to take cognizance of trespasses done to the private damage of the lord, because that would make him his own judge. 2 *Haw.* c. 10. §. 57. Also the sheriff in his torn.

Treasurer. See County Treasurer, Vol. I.

Trees. See Wood.

Trespasses (*Wilful or Malicious.*)

[1 G. 4. c. 56.]

STAT. 1 *G.* 4. *c.* 56. intituled *An Act for the summary punishment, in certain cases, of persons wilfully or maliciously damaging or committing trespasses on public or private property;* after reciting that whereas it is expedient that a more summary mode than now by law exists, of repressing and obtaining satisfaction for damages to buildings, fences, land, growing crops, and other real and personal property, whether of a *private* or *public* nature, by wilful and malicious trespassers and other wrongdoers, should be provided: Enacts, "that from and after the passing of this act, [15th *July* 1820] if any person or persons shall wilfully or maliciously do or commit any damage, injury, or spoil, to or upon any building, fence, hedge, gate, stile, guide post, mile stone, tree, wood, underwood, orchard, garden, nursery ground, crops, vegetables, plants, land, or other matter or thing growing or being thereon, or to or 1 G. 4. c. 56. Justices to award satisfaction for wilful damages done to buildings, &c. or to or upon pro-

1 G. 4. c. 56.

perty of any kind.

upon real or personal property, of any nature or kind soever, and shall be thereof convicted within four calendar months next after the committing of such injury, before any justice of the peace for the county, riding, division, city, town, or place where such offence shall have been committed, either by the confession of the party offending, or by the oath of one or more credible witness or witnesses, or of the party aggrieved in the premises, which oath such justice is hereby empowered to administer, every person so offending, and being thereof convicted as aforesaid, shall forfeit and pay to the person or persons aggrieved, such a sum of money as shall appear to such justice to be a reasonable satisfaction and compensation for the damage or injury or spoil so committed, not exceeding in any case the sum of *5l.*, which said sum of money shall be paid to the person or persons aggrieved; but in case such conviction shall take place on the sole evidence of the party aggrieved, then and in such case such satisfaction and compensation shall be paid to the overseer or overseers of the poor of the parish, township, or place where the offence was committed, or if the conviction shall take place in *Ireland*, then such satisfaction and compensation shall be paid to the governor of the Fever Hospital or Infirmary of the county, city, town, or place where the offence shall have been committed, to be by him or them applied for the relief and maintenance of the poor thereof, or of the establishment of such Fever Hospital or Infirmary; and in default of payment of the sum of money in which the offender or offenders shall have been so convicted as aforesaid, immediately, or within such time as the justice shall appoint at the time of conviction, together with all costs, charges, and expences attending the conviction, such justice shall and may commit such offender or offenders to the common gaol or house of correction, there to be kept to hard labour for any time not exceeding three calendar months, unless such penalty, costs, and charges shall be sooner paid and satisfied.

Limiting the sum to *5l.* Application of the money awarded.

In default of payment offenders to be committed.

In case of public property, one moiety to the informer, the other to the poor of the parish.

Provided always, that if any such damage, injury, or spoil shall have been done or committed as aforesaid, to or upon any church, chapel, bridge, building, common way, or other property whatsoever, whether real or personal, of a public nature, or wherein any public right is concerned, it shall or may be lawful to and for any such justice to proceed against and convict the offender or offenders, within the time aforesaid, and in the manner aforesaid, in any sum not exceeding *5l.*, as to such justice shall seem just and reasonable, at the instance and upon the information of any person prosecuting such offender or offenders, and to order and direct one moiety of the sum to be paid for such offence to be paid to the person so prosecuting, and the other moiety to and for the use of the poor of the parish, township, or place where the offence shall have been committed; and in default of payment of the sum in which any such offender or offenders shall have been so convicted as aforesaid, together with all costs, charges, and expences attending such conviction as aforesaid, such justice shall and may commit such offender or offenders to the common gaol or house of correction, there to be kept to hard labour for any time not exceeding three calendar months, unless such penalty, costs, and charges shall be sooner paid and satisfied."

Punishment of male offenders

§ 2. Provides and enacts, " that if any male person or persons under the age of sixteen years shall offend against any of the pro-

visions of this act, it shall be lawful for the justice before whom he or they shall have been convicted, in default of payment of the sum of money awarded against him or them by the said justice, together with all costs, charges, and expences attending such conviction, immediately, or within such time as the justice shall appoint at the time of conviction, to commit such offender or offenders to the house of correction, there to be corrected and imprisoned, and kept to hard labour, for any term not exceeding six weeks."

under sixteen years of age.

§ 3. And for the more easy bringing of offenders against this act to justice, enacts, " that it shall and may be lawful to and for any constable or other peace officer, and to and for the owner or owners of any property so damaged, injured, or spoiled, and to and for his, her, or their servant or servants, or other person or persons acting by or under his, her, or their authority, and to and for such person or persons as he, she, or they may call to his, her, or their assistance, without any warrant or other authority than by this act, to seize, apprehend, and detain any person or persons who shall have actually committed, or be in the act of committing, any offence or offences against any of the provisions of this act, and to take him, her, or them before any justice of the peace for the county, city, or place where the offence or offences shall be committed; and such justice is hereby empowered and required to proceed and act, with respect to such offender or offenders, in manner by this act directed."

Offenders may be apprehende and taken before a justice without any warrant.

§ 4. For the more easy and speedy conviction of offenders against this act, enacts, " that every justice of the peace, before whom any person or persons shall be convicted of any offence against this act, shall and may cause the conviction to be drawn up in the following form of words, or in any form of words to the same effect, as the case shall happen; *videlicet,*

Form of conviction.

" *BE it remembered, That on the* ——— *day of* —— *in the year of our Lord* —— A. B. *is convicted by and before me* ———, *one of his majesty's justices of the peace for the county of* ———, [or, *riding, division, city, town, or place,* as the case may be] *for that the said* ——— [here state the offence, and the time and place when and where the same was committed] *contrary to the statute made in the first year of the reign of King* George *the fourth, intituled* An act [here set forth the title of this act] *and I the said justice do hereby adjudge and determine that the said* ——— *shall for his said offence forfeit and pay the sum of* ——— *lawful money of* Great Britain [or, *of* Ireland, *if the same offence shall be there committed*] *and do order that the same shall forthwith* (a) *be paid by him* [here direct the payment according to the act.] *Given under my hand and seal the day and year first above written.*"

Vide § 1. ante.

§ 5. Enacts, " that it shall and may be lawful to and for any person or persons so convicted by any justice of the peace, as before mentioned, of any offence or offences against this act, to appeal to the justices of the peace assembled at the general quarter sessions, or general sessions to be holden for the county, riding, division, city, town or place where such conviction shall be made,

Power of appeal to the quarter sessions.

(a) [Or within ——— days from the day of the date hereof.]

1 G. 4. c. 56. next after seven days from the time of such conviction, on giving immediate notice of such appeal and of the matters thereof, and finding sufficient security, to the satisfaction of such justice, for prosecuting the said appeal with effect, and abiding the determination of the court therein; and such justices, in such general quarter sessions, or general sessions, shall hear and determine the matter of such appeal, and may either confirm or quash and annul the said conviction, and award such costs to either party, as to them the said justices shall seem just and reasonable; and the decision of the said justices therein shall be final, binding, and conclusive; and no proceedings to be had or taken in pursuance of this act, shall be quashed or vacated for want of form only, or be removed by *certiorari*, or any other writ or process whatsoever, into any of H. M.'s courts of record at *Westminster*, or elsewhere, any law or statute to the contrary thereof in anywise notwithstanding; and if upon the hearing of any such appeal, the judgment of the justice before whom any appellant shall have been convicted, shall be confirmed, such appellant shall forthwith pay the penalty and costs awarded to be paid by such appellant, or in default thereof, shall be immediately committed by the said court to the common gaol or house of correction, there to remain for any time not exceeding six calendar months, unless such penalty and costs shall be sooner paid."

Decision of justices in sessions to be final.

Costs.

Not to affect any act as to punishment for trespass, nor to extend to persons claiming a right, &c.

§ 6. Enacts, "that nothing in this act contained shall repeal or affect any act or acts now in force, whereby any person or persons may be subject to punishment for wilful and malicious acts of trespass to any property, either public or private, or shall extend to any case of wilful or malicious mischief or trespass to private property, in which the damage claimed shall exceed the sum of 5*l.*, or to any case wherein it shall appear to the satisfaction of the justice or justices before whom the complaint is made, that the party trespassing acted under a fair and reasonable supposition, that he had a right to do the act to the property in respect whereof the trespass was committed or alleged to have been committed, or to do or commit the act complained of; or shall have committed such trespass in hunting, or being a qualified person, and having duly obtained his certificate authorising him to kill game, shall have committed the injury complained of in the pursuit of any kind of game."

Convictions under this act to bar all other suits for the same offence.

§ 7. Provides and enacts, "that in case any person or persons shall be convicted of any offence against this act, before any justice of the peace, on the complaint or information of any person or persons, or public or private property having been so injured, damaged, or spoiled, and shall have paid the penalty, costs, and charges under such conviction, or shall have suffered the imprisonment awarded for non-payment thereof, then and in every such case such conviction shall and may be pleaded in bar of any action, suit, or information that shall be commenced, instituted, or prosecuted for such and the same offence in any court whatsoever."

Act to extend only to England and Ireland.

§ 8. This act shall be in force in *England* and *Ireland*, and not in any other part of the U. K.

Justices to award amount

It is clear that the justices are only to award the amount of the damage actually done, for the words of the statute are a reasonable

satisfaction not exceeding 5*l*. They are not to award 5*l*. at all events. *Rex* v. *Harper*, *E.* 3 *G.* 4. 1 *D. & R.* 67. — of actual damage.

Bane v. *Methuen and Others*, *E.* 1824. 2 *Bing.* 63. The plaintiff sued the defendants, (two magistrates and a constable,) in trespass for an apprehension and detention under the following warrant. (*a*) At the trial before *Best* J., *Salisbury* Summer assizes 1823, the neglect of summons stated in the warrant having been proved, and also that the magistrates, after the apprehension of the plaintiff, convicted him of a malicious trespass, under stat. 1 *G.* 4. *c.* 56., the learned judge directed a nonsuit, with liberty for the plaintiff to move to enter a verdict, it having been urged on his part, that there was no clause in the above act of parliament authorising the magistrates to apprehend him till after conviction. A rule nisi was obtained on this ground; and *Shergold* v. *Holloway*, 2 *Stra.* 1002., and *Hill* v. *Bateman*, 1 *Str.* 711. were cited; Cause was shewn thus — In the first of the cases cited the magistrates had no jurisdiction; in the second, the proceeding ought to have been by distress; but by the general law a magistrate cannot decide *ex parte*, and is therefore bound to summon the party charged with an offence; if he omits to appear, a warrant to apprehend becomes necessary to enforce the summons, and such a warrant the magistrates are authorised to issue. It is clear that when an act of parliament gives a justice jurisdiction over an offence, it impliedly gives him a power to make out a warrant, and bring before him any person charged with such an offence. 2 *Hawk.* *c.* 13. *s.* 15. 12 *Rep.* 131 *b.* *Reg.* v. *Simpson.* 10 *Mod.* 248. As to the act in question, by the third section constables are empowered to apprehend for an offence, even without a warrant. *R. D.*

Where a statute gives a justice jurisdiction over an offence, it impliedly gives him power to apprehend any person charged with such offence. Held, therefore, that a magistrate might issue a warrant to apprehend a person charged with an offence under the malicious trespass act, 1 G. 4. c. 56., especially after the offender had neglected a summons.

As to malicious trespasses in woods, robbing orchards, gardens, &c. see tit. Wood, § II.

(A.) Information for a Wilful and Malicious Trespass. — A.

County of ——} THE *information and complaint of* A. I. *of* ——, *in the county of* ——, (the party aggrieved, or) *labourer*, *made on oath before me*, J. P. *esquire*, *one of his*

(*a*) " *Wilts*, to wit. To the constables of *Castle Combe*, in the said county, and to all other constables, tithingmen, and others whom it may concern.

" Forasmuch as *William Taylor*, of the parish of *Castle Combe*, in the said county, shopkeeper, hath this day made information and complaint upon oath before us, two of H. M.'s justices of the peace in and for the said county, that he hath good cause to suspect, and doth suspect, that *William Bane*, late of *Castle Combe*, in the said county, saddler, did, on *Thursday*, the 6th of *February* last, wilfully and maliciously break the windows of an uninhabited dwelling house in the said parish of *Castle Combe*, the property of the said *William Taylor*, by shooting at the same with a gun, and the said *William Bane* having been duly summoned to appear before us to answer the said complaint, hath neglected so to do; these are, therefore, to command you, in H. M.'s name, to apprehend and bring before us, or some other of H. M.'s justices of the peace for the said county as shall be assembled at the petty sessions, to be holden at the *Methuen Arms*, in *Corsham*, in the said county, the said *William Bane*, on *Wednesday* the 19th of the present month, to answer unto the said complaint, and to be further dealt withal according to law. Herein fail you not. Given under our hands and seals the 5th of *March*, 1823."

majesty's justices of the peace of and for the said county, the ——— day of ———, in the year of our Lord, one thousand eight hundred and twenty ———:

Who says, that on the ——— day of ——— instant, at ———, in the parish of ———, in the said county, A. O. *of ———, in the county aforesaid, shoemaker, did wilfully and maliciously* [here state the particulars of the trespass, and the nature and number, &c.; and, if not done both *wilfully* and *maliciously*, either of those words can be omitted accordingly (*a*);] *and that the said* A. O. *did not then and there act under a fair and reasonable supposition, that he had a right to do or commit the act complained of; and that the said trespass was not committed in hunting, nor by the said* A. O., *then and there being a qualified person, and having duly obtained his certificate authorising him to kill game, in the pursuit of any kind of game, the property of ———, contrary to the statute made in the first year of the reign of king* George *the fourth, intituled* "An Act for the summary punishment, in certain cases, of persons wilfully or maliciously damaging or committing trespasses on public or private property."

And thereupon he, the said A. I., *prays the judgment of me the said justice in the premises.*

A. I.

Before me,
J. P.

B. (B.) Warrant to apprehend thereon. (*b*)

County of ——— } To the Constable of ——— in the said county.

WHEREAS information and complaint upon oath have been made before me, J. P. *esquire, one of his majesty's justices of the peace of and for the said county, by* A. I. *of ———, in the county aforesaid,* [*the party aggrieved, or*] *labourer, that on the ——— day of ——— instant, at ———, in the parish of ———, in the said county,* A. O. *of ———, in the county aforesaid, shoemaker, did wilfully and maliciously* [here follow the words of the Information,] *the property of ———, contrary to the statute made in the first year of the reign of king* George *the fourth, intituled* "An Act for the summary punishment, in certain cases, of persons wilfully or maliciously damaging or committing trespasses on public or private property."

These are therefore to require you to apprehend and bring before me, or some other of his majesty's justices of the peace acting in and for the said county of ———, the body of the said A. O., *to answer unto the said information and complaint, and to be further dealt with according to law. Herein fail not. Given under my hand and seal the ——— day of ———, in the year of our Lord, one thousand eight hundred and ———.*

J. P. (L. S.)

(a) It should be observed, that a justice has not authority in any case, where the damages exceed *5l.*; and that the conviction must take place within four calendar months next after the committing of the trespass.

(b) See *Bane* v. *Methuen and others*, 2 *Bing.* 63. *ante*, p. 557.

[The form of the Conviction will be found in the fourth section of the act, p. 555.]

(C.) Commitment thereon for not paying the Sum in which convicted. C.

County of ——— } To the Constable of ———, in the said county, and to the Keeper of the House of Correction at ———, in the said county.

WHEREAS A. O., *of* ———, *in the said county, shoemaker, is,* [or *was on the* ——— *day of* ——— *last,*] *convicted by and before me,* J. P. *esquire, one of his majesty's justices of the peace of and for the said county, upon the oath of* A. I., *for that the said* A. O., *on the* ——— *day of* ——— *at* ———, *in the parish of* ——— *in the said county, did wilfully and maliciously* [here follow the words of the Information, stating that it did not appear to me, the said *J. P.*, that the said *A. O.* there and then acted, &c.] *the property of* ———, (the party aggrieved,) *contrary to the statute made in the first year of the reign of king* George *the fourth, intituled* "An Act for the summary punishment, in certain cases, of persons wilfully or maliciously damaging or committing trespasses on public or private property." *And thereupon it is* [or *was*] *by me the said justice, adjudged and determined, that the said* A. O. *shall* [or *should*] *forfeit and pay the sum of* ———, *of lawful money of* Great Britain, *as a reasonable satisfaction and compensation for the damage* [or *injury or spoil,*] *so done* [or *committed*] *by the said* A. O., *together with the further sum of* ——— *for the costs, charges, and expences attending the said conviction, unto* ——— [as in the conviction.]

And whereas the said A. O. *has made default of payment within the time appointed by me, the said justice, of the said sum in which he has been so convicted as aforesaid, together with the said costs, charges, and expences:*

These are therefore to require you the said constable, forthwith to apprehend and to convey the said A. O. *to the said house of correction at* ——— *aforesaid, and deliver him to the said keeper thereof, together with this precept; and you the said keeper are hereby commanded to receive the said* A. O. *into your custody in the said house of correction, there to be kept to hard labour for* ——— *calendar months,* [any period not exceeding three calendar months. And if the offender be a male person under the age of sixteen years, the second section of the act directs that the justice, in default of payment, is to commit such offender to the house of correction, there to be corrected and imprisoned, and kept to hard labour for any term not exceeding six weeks] *unless such penalty, costs, and charges as aforesaid, shall be sooner paid and satisfied, and for your so doing this shall be your sufficient warrant. Given under my hand and seal the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———.

D. (D.) Recognizance on giving Notice of Appeal against a Conviction.

County of } *BE it remembered that on the* ——— *day of*
——— } ———, *in the* ——— *year of the reign of our sovereign lord* George *the fourth, of the United Kingdom of* Great Britain *and* Ireland, *king, defender of the faith:* A. O. *of* ———, *in the said county, shoemaker, and* B. O. *of* ———, *in the said county, labourer, personally came before me,* J. P. *esquire, one of his majesty's justices of the peace, of and for the said county, and acknowledged themselves to owe to our said lord the king the sum of* ——— *pounds each, to be made and levied on their goods and chattels, lands and tenements respectively, to the use of our said lord the king, his heirs and successors, if default shall be made in the condition following:* —

Whereas the above bound A. O. *is* [or if the recognisance was entered into subsequent to the conviction, say, "*was on the* ——— *day of* ——— *last*"] *convicted by and before me the said justice, for that the said* A. O., *on the* ——— *day of* ——— *instant, at* ——— *in the parish of* ———, *in the said county, did wilfully and maliciously* [here state the offence as in the Information,] *contrary to an act passed in the first year of the reign of king* George *the fourth, intituled* "An Act for the summary punishment, in certain cases, of persons wilfully or maliciously damaging or committing trespasses on public or private property:" *And whereas the said* A. O. *has given immediate notice of appeal against the said conviction: Now the condition of this recognisance is such, that if the above bound* A. O. *shall personally appear at the next general quarter or general sessions of the peace to be held at* ———, *in and for the said county of* ———, *and then and there prosecute the said appeal with effect, and abide the determination of the said court therein, and pay such costs as shall be awarded, then this recognisance shall be void.*

Taken and acknowledged before me,

J. P.

Trial. See Jurors, Vol. III. Sessions, *ante*.

Turnips.

[13 G. 3. c. 32.—42 G. 3. c. 67.]

13 G. 3. c. 32. BY stat. 13 *G.* 3. *c.* 32. If any person shall steal and take away, or maliciously pull up or destroy, any turnips, potatoes, cabbages, parsnips, pease, or carrots, growing or being in any garden, lands, or grounds, open or inclosed; he shall, on conviction before one justice, by confession or oath of one witness, forfeit such sum not exceeding 10*s.* (20*s. by stat.* 42 *G.* 3. *c.* 67.) over and above the value of the goods stolen, as to such justice shall seem meet: to be distributed between the owner of the goods and

the overseer of the poor or other persons having the charge and disposal of the funds for the use of the poor, in such proportion as the justice shall think fit; or he may assign the whole to such owner or overseer, or other person, according to his discretion. And in default of payment, the justice shall commit him to the house of correction, there to be kept to hard labour, not exceeding one calendar month, unless the penalty shall be sooner paid; and the bringing the offender before the justice, and the proceedings against offenders under the authority of this act, may be in the most summary way. 13 G. 3. c. 32.

And in all informations and other proceedings for any of the said offences, the evidence of the owner, and of the inhabitants of the parish or place shall be allowed; provided, that where the conviction shall be on the oath of the owner, the whole of the penalty shall be paid to the overseer, for the use of the poor.

And the conviction shall be drawn up to the following effect:

BE it remembered, that on the ——— day of ———, in the year of our Lord ———, A.O. *is duly convicted before me* J.P. *esquire, one of his majesty's justices of the peace for the county of ———* [specifying the offence, and the time and place when and where the same was committed, as the case shall be.] *Given under my hand and seal the day and year aforesaid.*

§ 5. No person shall be prosecuted for any such offence, unless the prosecution be begun within 30 days after the offence committed.

By stat. 42 *G*. 3. *c*. 67. If any person shall steal, take away, wilfully or maliciously pull up, injure, or destroy any turnips, potatoes, cabbages, parsnips, beans, pease, or carrots, growing or being in any garden, orchard, lands, or grounds, open or inclosed, and shall be thereof convicted before any justice or justices of the peace for the county or place where the offence shall be committed, in the manner directed by stat. 13 *G*. 3. *c*. 32. every such person so offending, and being convicted as aforesaid, shall forfeit and pay, upon such conviction, such sum or sums of money, not exceeding the sum of twenty shillings over and above the value of the goods stolen, taken away, wilfully or maliciously pulled up, injured or destroyed, as to such justice or justices shall seem meet; which penalties and forfeitures shall be recovered and applied in the same manner and upon the same evidence as the penalties and forfeitures imposed by the said act of 13 *G*. 3. are directed to be recovered and applied; and in default of payment of the said penalty, such justice or justices shall commit the offender to the house of correction, there to be kept to hard labour for any time not exceeding two months, unless such penalty shall be sooner paid or satisfied.

42 G. 3. c. 67. If any person shall steal, &c. or destroy any turnips, &c. growing in any grounds, open or inclosed, and be convicted before a justice in manner directed by 13 G. 3. c. 32. he shall forfeit not exceeding 20*s*. besides the value of the goods, &c.

It is to be observed that the provisions of stat. 13 *G*. 3. *c*. 32. are extended by stat. 42 *G*. 3. *c*. 67. in three particulars only; viz.

1st. In the description of the offence, "If any person shall steal, take away, wilfully or maliciously pull up, *injure*, or destroy any turnips, potatoes, cabbages, parsnips, *beans*, peas, or carrots, growing or being in any garden, *orchard*, lands, or grounds open or inclosed," &c.

2dly. In the penalty, "any sum not exceeding 20s." "over and above the value of the goods stolen, *taken away wilfully or maliciously pulled up, injured, or destroyed.*"

3dly. In the term of imprisonment, "any time not exceeding *two* months."

A. (A.) Information against an Offender for Stealing Cabbages.

County of ——— } *THE information and complaint of* A. I. *of* ———, *in the said county, yeoman, made on oath before me,* J. P. *esquire, one of his majesty's justices of the peace in and for the said county, the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———:

Who says, that on ——— *the* ——— *day of* ——— *instant, a certain quantity of cabbages and heads of cabbage plants were wilfully torn from the stalks where they were growing in the grounds of the said* A. I. *at* ———, *in the parish of* ———, *in the said county, and from thence stolen and taken away by* A. O. *of* ———, *in the said county, labourer, and* B. O. *of* ———, *in the county aforesaid, cordwainer: And whereas* A. W. *of* ——— *in the said county, labourer, a credible witness, makes oath before me, the said justice of the peace, that on* ——— *the* ——— *day of* ——— *instant, he the said* A. W. *saw the said* A. O. *and* B. O. *in the grounds of the said* A. I., *at* ——— *aforesaid, in the parish of* ———, *in the said county, and then and there wilfully tear from the stalks where they were growing in the grounds of the said* A. I., *a certain quantity of cabbages and heads of cabbages, and the same take and carry away: he the said* A. I. *therefore prays that justice may be done in the premises.*

A. I.
A. W.

Before me,
J. P.

[The Warrant or Summons may, without difficulty, be drawn from the above Information.]

B. (B.) Commitment thereupon.

County of ———, } To the Constable of ———, in the said county, and to the Keeper of the House of Correction at ———, in the said county.

WHEREAS A. I. *of* ———, *in the said county, yeoman, on the* ——— *day of* ——— *instant, did exhibit on oath before me,* J. P., *esquire, one of his majesty's justices of the peace for the said county, a complaint in writing, signed by him the said* A. I. *that on* ——— *the* ——— *day of* ——— *instant, a certain quantity of cabbages and heads of cabbage plants were wilfully torn from the stalks where they were growing on the grounds of the said* A. I. *at* ———, *in the parish of* ———, *in the said county, and from thence stolen and taken away by* A. O. *of* ———, *in the said county, labourer, and* B. O. *of* ——— *in the county aforesaid, cordwainer: And whereas on the said* ——— *day of*

——— *instant,* A. W. *of* ———, *in the said county, labourer, a credible witness, did make oath before me the said justice, that on* ——— *the* ——— *day of* ——— *instant, he the said* A. W. *saw the said* A. O. *and* B. O. *in the grounds of the said* A. I., *at* ——— *aforesaid, in the parish of* ——— *in the said county, then and there wilfully tear from the stalks where they were growing in the grounds of the said* A. I., *a certain quantity of cabbages and heads of cabbages, and the same take and carry away: And whereas the said* A. O. *and* B. O. *being now brought before me, have not been able to clear themselves from the said charge, but on the contrary the said* A. I. *and* A. W. [or as the case may be,] *have made due proof thereof upon oath, and thereupon the said* A. O. *and* B. O. *have been by me convicted of so stealing and taking away the said cabbages as aforesaid, and ordered to pay the sum of* ——— *each, to be distributed between the said* A. I., *the owner of the cabbages, and the overseer of the poor of the said parish of* ———, *where the said offence was committed: And whereas the said* A. O. *and* B. O. *have made default of payment of the said sum so ordered to be paid as aforesaid, I do therefore hereby require you the said constable of* ——— *aforesaid, to convey the said* A. O. *and* B. O. *to the house of correction aforesaid, and to deliver them to the keeper thereof, together with this warrant; And I do hereby command you the said keeper to receive them into your custody in the said house of correction, there to be kept to hard labour* [if the conviction be on stat. 13 *G.* 3. *c.*32., say] *each for one calendar month* [but if the conviction be on stat. 42 *G.* 3. *c.*67., the commitment is to be for any time not exceeding two months, and the word *calendar* is to be omitted,] *unless the said penalty shall be by them sooner paid. Herein fail not. Given under my hand and seal at* ———, *in the said county, the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———.

J. P.

Trial. See Indictment, Vol. III.
Turnpikes. See Highways, Vol. II.

Vagrants.

[43 *G.* 3. *c.* 61.—52 *G.* 3. *c.* 31.—58 *G.* 3. *c.* 92.—5 *G.* 4. *c.* 13. *c.* 83.]

BY stat. 5 *G.* 4. *c.* 83. intituled, "*An act for the punishment of idle and disorderly persons, and rogues and vagabonds, in that part of* G. B. *called* England." After reciting that an act was passed in the 3d year of the reign of His present Majesty, intituled, "*An act for consolidating into one act and amending the laws relating to idle and disorderly persons, rogues, and vagabonds, incorrigible rogues and other vagrants, in* England." And that the said act was to continue in force until 1 *Sept.* 1824, and no longer; and it is expedient to make further provision for the suppression of 5 G. 4. c. 83. 3 G. 4. c. 40.

5 G. 4. c. 83.

vagrancy, and for the punishment of idle and disorderly persons, rogues, and vagabonds, and incorrigible rogues, in *England*; it is enacted "that all provisions heretofore made relative to idle and disorderly persons, rogues, and vagabonds, incorrigible rogues or other vagrants in *England*, shall be and the same are hereby repealed, except only as to any offence committed before the passing of this act (*viz.* 21 *June*, 1824,) which shall be punished under the provisions of the said recited act, and save and except as herein-after excepted."

Provisions heretofore made relative to vagrants shall be repealed, except as to offences committed before the passing of this act.

Such provisions of 32 G. 3. c. 45. as give power of passing convicts on discharge from prison, repealed.

By § 2. reciting that by stat. 32 *G.* 3. *c.* 45. H. M.'s judges of assizes and the justices at the general or quarter sessions, or any justice of the peace, are empowered to order any convict upon his discharge from prison to be conveyed by pass in manner therein directed; and the judge, justices or justice aforesaid, are also empowered to convey by pass any person who shall be acquitted at the assizes or general or quarter sessions, or discharged by proclamation or otherwise, who shall apply to be conveyed as aforesaid: And whereas doubts have arisen whether such parts of such act as give such power to order such person to be conveyed by pass were by the provisions of the said stat. 3 *G.* 4. *c.* 40. repealed; and that it is expedient to remove such doubts; it is enacted that all such provisions of the said recited stat. 32 *G.* 3. *c.* 45. (*viz.* § 4.) as give such power of conveying by pass any convict upon his discharge from prison, and any person who shall be acquitted at the assizes or general or quarter sessions, or discharged by proclamation or otherwise, shall be hereby repealed.

Not to extend to repeal any act in force in Scotland or Ireland relative to the removal of poor, &c.

By § 22. Nothing herein contained shall be construed to extend or apply to *Scotland* or *Ireland*, nor to alter any law now in force for the removal of poor persons born in *Scotland*, *Ireland*, or the *Isles of Man*, *Jersey*, and *Guernsey*, and becoming chargeable to parishes in *England*, such persons not having committed acts of vagrancy as hereinbefore described, nor to alter any law now in force relating to lunatic vagrants.

§ I. *Idle and disorderly Persons.*
[Stat. 5 *G.* 4. *c.* 83. § 3.]

II. *Rogues and Vagabonds.*
[§ 4.]

III. *Incorrigible Rogues.*
[§ 5.]

IV. *Apprehending.*
[§ 6.]

V. *Power of Justices out of Sessions.*
[§ 7, 8, 9.]

VI. *Proceedings at Sessions.*
[§ 10.]

VII. *Duties of Constables and Peace Officers; — Penalties for Neglect.*
[§ 11, 12.]

VIII. *Power to search Lodging Houses.*
[§ 13.]

§ I. Idle and disorderly Persons.

Persons committing certain offences to be deemed idle and disorderly persons; and how to be punished.

By stat. 5 *G.* 4. *c.* 83. § 3. — 1. Every person being able wholly or in part to maintain himself or herself, or his or her family, by work or by other means, and wilfully refusing or neglecting so to do, by which refusal or neglect he or she, or any of his or her family whom he or she may be legally bound to maintain, shall have become chargeable to any parish, township, or place.

2. Every person returning to and becoming chargeable in any parish, township, or place from whence he or she shall have been legally removed by order of two justices of the peace, unless he or she shall produce a certificate of the churchwardens and overseers of the poor of some other parish, township, or place, thereby acknowledging him or her to be settled in such other parish, township, or place. (*a*)

3. Every petty chapman or pedlar wandering abroad and trading, without being duly licensed, or otherwise authorized by law.

4. Every common prostitute wandering in the public streets or public highways, or in any place of public resort, and behaving in a riotous or indecent manner.

5. And every person wandering abroad, or placing himself or herself in any public place, street, highway, court, or passage, to beg or gather alms, or causing or procuring or encouraging any child or children so to do.

[And see another instance § 16.]

Shall be deemed *an idle* and *disorderly person* within the true intent and meaning of this act; and it shall be lawful for any justice of the peace to commit (*b*) such offender (being thereof con-

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(*a*) Vide tit. Poor, Vol. IV. § XIX. (3.) See also *Mann* v. *Davies*, 3 *B.* & *A.* 103. 2 *Nol. P. L.* 251—258.

Warrant must shew the justice's authority.

(*b*) And such warrant ought to shew that the person convicting had authority to convict; for the omission thereof is a gross defect, and the defendants were therefore discharged. *Rex* v. *York* and another, 5 *Burr.* 2684.

5 G. 4. c. 83.

victed before him by his own view, or by the confession of such offender, or by the evidence on oath of one or more credible witness or witnesses) to the house of correction, (a) there to be kept to hard labour for any time not exceeding one calendar month." (A.)(B.) (C.)

A. B. C.

§ II. Rogues and Vagabonds.

Persons committing certain offences to be deemed *rogues* and *vagabonds*: and how to be punished.

By stat. 5 *G.* 4. *c.* 83. § 4.—1. Every person committing any of the offences herein-before mentioned, after having been convicted as an idle and disorderly person.

2. Every person pretending or professing to tell fortunes, or using any subtle craft, means, or device, by palmistry or otherwise, to deceive and impose on any of H.M.'s subjects.

3. Every person wandering abroad and lodging in any barn or outhouse, or in any deserted or unoccupied building, or in the open air, or under a tent, or in any cart or waggon, not having any visible means of subsistence, and not giving a good account of himself or herself.

4. Every person wilfully exposing to view, in any street, road, highway, or public place, any obscene print, picture, or other indecent exhibition.

5. Every person wilfully, openly, lewdly, and obscenely exposing his person in any street, road, or public highway, or in the view thereof, or in any place of public resort, with intent to insult any female.

6. Every person wandering abroad and endeavouring by the exposure of wounds or deformities to obtain or gather alms.

7. Every person going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence.

8. Every person running away and leaving his wife, or his or her child or children, chargeable, or whereby she or they or any of them shall become chargeable to any parish, township or place.

9. Every person playing or betting in any street, road, highway or other open and public place, at or with any table or instrument of gaming, at any game or pretended game of chance. (b)

10. Every person having in his or her custody or possession any picklock, key, crow, jack, bit, or other implement, with intent feloniously to break into any dwelling-house, warehouse, coach-house, stable, or outbuilding, or being armed with any gun, pistol,

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Commitment must be for a limited time.

The commitment (see the parallel words of stat. 17 *G.* 2. *c.* 5.) must be for a precise definite time, to be specified in the warrant of commitment. *Baldwin and others* v. *Blackmore*, esq. 1 *Burr.* 596. *S. P.* *Rex* v. *J. Hall.* 3 *Burr.* 1636. If for deserting a family, the warrant must state that they were chargeable. 3 *Burr.* 1636. It must also state that the defendant had been *convicted* of the offence, and not merely that he had been *charged*. *Rex* v. *Rhodes.* 4 *T. R.* 220. *Rex* v. *Hooper*. 6 *T. R.* 225.

(a) And by stat. 4 *G.* 4. *c.* 64. § 7. all idle and disorderly persons, rogues and vagabonds, incorrigible rogues, and other vagrants, are to be committed to houses of correction, and not to the common gaols. See Vol. II. tit. Gaols, &c. § XIV. (a) p. 722.

(b) Playing bowls was held not to be within stat. 17 *G.* 2. *c.* 5. § 2. *R.* v. *Clarke.* 1 *Hawk. R.* 25. *Paley*, 25. 110.

hanger, cutlass, bludgeon, or other offensive weapon, or having upon him or her any instrument with intent to commit any felonious act. (*a*) 5 G. 4. c. 83.

11. Every person being found in or upon any dwelling-house, warehouse, coach-house, stable, or outhouse, or in any inclosed yard, garden, or area, for any unlawful purpose.

12. Every suspected person or reputed thief, frequenting any river, canal, or navigable stream, dock, or basin, or any quay, wharf, or warehouse near or adjoining thereto, or any street, highway, or avenue leading thereto, or any place of public resort, or any avenue leading thereto, or any street, highway, or place adjacent, with intent to commit felony.

[See another instance, § 15.]

13. And every person apprehended as an idle and disorderly person, and violently resisting any constable or other peace officer so apprehending him or her, and being subsequently convicted of the offence for which he or she shall have been so apprehended.

Shall be deemed a rogue and vagabond, within the true intent and meaning of this act; and it shall be lawful for any justice of the peace to commit (C. E.) such offender (being thereof convicted before him by the confession of such offender, or by the evidence on oath of one or more credible witness or witnesses) to the house of correction, there to be kept to hard labour for any time not exceeding three calendar months; and every such picklock key, crow, jack, bit, and other implement, and every such gun, pistol, hanger, cutlass, bludgeon, or other offensive weapon, and every such instrument as aforesaid, shall, by the conviction of the offender, become forfeited to H. M. C. E.

§ III. Incorrigible Rogues.

By stat. 5 *G*. 4. *c*. 83. § 5.—1. Every person breaking or escaping out of any place of legal confinement before the expiration of the term for which he or she shall have been committed or ordered to be confined by virtue of this act. **Who shall be deemed *incorrigible rogues*.**

2. Every person committing any offence against this act which shall subject him or her to be dealt with as a rogue and vagabond, such person having been at some former time adjudged so to be (*b*) and duly convicted thereof.

(*a*) *Rex* v. *Brown*, 8 *T. R.* 26. *Brown* was committed upon stat. 23 *G*. 3. *c*. 88. (now repealed by stat. 5 *G*. 4. *c*. 83. § 1.) for having *upon him* many picklock keys, two crows, and other implements, with an intent feloniously to break and enter into a dwelling house at *Wantey*. Objection was taken to the commitment, that it did not state that he had those implements *upon him when he was apprehended*. Ld. *Kenyon* C. J. said, I yield with great reluctance to the objection, but I am afraid it is well-founded; and the prisoner was discharged.

(*b*) On the question, "Whether persons once convicted under the vagrant acts, which subsisted previous to stat. 5 *G*. 4. c. 40, as *rogues and vagabonds*, were under these words to be deemed *incorrigible rogues* for a second offence of a like nature." The Attorney General (Sir *John Copley*) has given the following opinion, which he kindly furnished for the use of this work, on 13th *January*, 1825.

[" I am of opinion, that a person convicted of any offence under the new " vagrant act, which would subject him to be dealt with as a *rogue and vagabond*,

5 G. 4. c. 83.

3. And every person apprehended as a rogue and vagabond, and violently resisting any constable or other peace officer so apprehending him or her, and being subsequently convicted of the offence for which he or she shall have been so apprehended.

Shall be deemed an incorrigible rogue within the true intent and meaning of this act; and it shall be lawful for any justice of the peace to commit such offender (being thereof convicted before him by the confession of such offender, or by the evidence on oath of one or more credible witness or witnesses) to the house of correction, there to remain until the next general or quarter sessions of the peace; and every such offender who shall be so committed to the house of correction, shall be there kept to hard labour during the period of his or her imprisonment. (*a*)

§ IV. Apprehending.

Any person may apprehend offenders.

By stat. 5 *G*. 4. *c*. 83. § 6. It shall be lawful for any person whatsoever to apprehend any person who shall be found offending against this act, and forthwith to take and convey him or her before some justice of the peace, to be dealt with in such manner as is hereinbefore directed, or to deliver him or her to any constable or other peace officer of the place where he or she shall have been apprehended, to be so taken and conveyed as aforesaid; and in case any constable or other peace officer shall refuse or wilfully neglect to take such offender into his custody, and to take and convey him or her before some justice of the peace, or shall not use his best endeavours to apprehend and to convey before some justice of the peace any person that he shall find offending against this act, it shall be deemed a neglect of duty in such constable or other peace officer, and he shall on conviction be punished in such manner as is hereinafter directed.

Penalty on constables, &c. neglecting their duty.

§ V. Power of Justices out of Sessions.

Justices may issue warrant to apprehend suspected persons.

By stat. 5 *G*. 4. *c*. 83. § 7. it shall be lawful for any justice of the peace, upon oath being made before him that any person hath committed or is suspected to have committed any offence against

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"and who has also been convicted as a rogue and vagabond under any former "act of parliament, is by the statute 5 *G*. 4. *c*. 83., to be deemed an *incorrigible* "*rogue*, and subject to be punished as such."

(Signed) "JOHN COPLEY, *Serjeant's Inn.*"]

(*a*) By stat. 17 *G*. 2. *c*. 5. § 24. it was enacted, that if the child of any vagrant, above the age of seven years, shall be committed to the house of correction, the justices in sessions, if they saw convenient, at any time before such child should be discharged, might order such child to be placed out as a servant or apprentice to any person who was willing to take such child, till such child should be of the age of 21 years, or for a less time; and if any offender, who was found wandering with such child, should be again found with the same child which was so placed out, he should be deemed an incorrigible rogue.

But no similar clause since the repeal of the laws relating to vagrants by stat. 3 *G*. 4. *c*. 40. has been introduced in that act (now expired) or in the existing vagrant act 5 *G*. 4. *c*. 83.

By stat. 3 *G*. 4. *c*. 40. § 14. bastard children born of vagrant mothers, were declared to belong to their mother's settlement, and to no other place, but this is expired, and no similar provision appears in stat. 5 *G*. 4. *c*. 84.

this act, to issue his warrant to apprehend and bring before him or some other justice of the peace the person so charged, to be dealt with as is directed by this act. 5 G.4. c.83.

All vagrants to be searched, and trunks, bundles, &c. to be inspected.

By § 8. it shall be lawful for any constable, peace-officer, or other person apprehending any person charged with being an idle and disorderly person, or a rogue and vagabond, or an incorrigible rogue, to take any horse, mule, ass, cart, car, caravan, or other vehicle, or goods in the possession or use of such person, and to take and convey the same as well as such person before some justice of the peace, and for every justice of the peace by whom any person shall be adjudged to be an idle and disorderly person, or a rogue and vagabond, or an incorrigible rogue, to order that such offender shall be searched, and that his or her trunks, boxes, bundles, parcels, or packages shall be inspected in the presence of the said justice, and of him or her, and also that any cart, car, caravan, or other vehicle which may have been found in his or her possession or use, shall be searched in his or her presence; and it shall be lawful for the said justice to order that any money which may be then found with or upon such offender shall be paid and applied for and towards the expence of apprehending, conveying to the house of correction, and maintaining such offender during the time for which he or she shall have been committed; and if upon such search money sufficient for the purposes aforesaid be not found, it shall be lawful for such justice to order that a part, or if necessary the whole of such other effects then found, shall be sold, and that the produce of such sale shall be paid and applied as aforesaid, and also that the overplus of such money or effects, after deducting the charges of such sale, shall be returned to the said offender. (*a*)

Effects found upon vagrants to be sold, and applied towards the expences of maintaining such offenders.

Justices may bind persons by recognizance to prosecute vagrants at sessions.

Power of sessions to order payment of expences to prosecutors and witnesses.

By § 9. when any justice as aforesaid shall commit any such incorrigible rogue to the house of correction, there to remain till the next general or quarter sessions, or when any such idle and disorderly person, rogue, and vagabond, or incorrigible rogue, shall give notice of his or her intention to appeal against the conviction of him or her, and shall enter into recognizance as hereinafter directed to prosecute such appeal, such justice shall require the person by whom such offender shall be apprehended; and the person or persons whose evidence shall appear to him to be material to prove the offence and to support such conviction, to become bound in recognizance [F] to H. M. his heirs and successors, to appear at the said general or quarter sessions, to give evidence against such offender touching such offence; and the justices of the peace at their said general or quarter sessions are hereby authorized and empowered, at the request of any person who shall have become bound in any such recognizance, to order the treasurer of the county, riding, division, or place in which the offence shall have been committed, to pay unto such prosecutor, and unto the witness or witnesses on his or her behalf, such sum or sums of money as to the court shall seem reasonable and sufficient to reimburse such prosecutor and such witness or witnesses respectively for the expences he, she, or they shall have been severally put to, and for his, her, or their trouble and loss of time in and about F.

(*a*) As to the expences of carrying vagrants to gaol, where they have no effects, see stat. 4 G.4. c. 64. § 39. and 5 G. 4. c. 85. § 22. Vol. II. p. 728.

5 G. 4. c. 83.

such prosecution; which order the clerk of the peace is hereby directed and required forthwith to make out and deliver unto such prosecutor, or unto such witness or witnesses, upon being paid for the same the sum of 2*s.* and no more; and the said treasurer is hereby authorized and required, upon sight of such order, forthwith to pay unto such prosecutor or other person or persons authorized to receive the same, such money as aforesaid, and the said treasurer shall be allowed the same in his account; and in case any such person or persons as aforesaid shall refuse to enter into such recognizance, it shall be lawful for such justice to commit such person or persons so refusing to the common gaol, there to remain until, he, she, or they shall enter into such recognizance, or shall be otherwise discharged by due course of law.

§ VI. Proceedings at Sessions.

Power of sessions to detain and keep to hard labour, and punish by whipping, rogues and vagabonds and incorrigible rogues.

By stat. 5 *G.* 4. *c.* 83. § 10. When any incorrigible rogue shall have been committed to the house of correction, there to remain until the next general or quarter sessions, it shall be lawful for the justices of the peace there assembled to examine into the circumstances of the case, and to order, if they think fit, that such offender be further imprisoned in the house of correction, and be there kept to hard labour for any time not exceeding one year from the time of making such order, and to order further, if they think fit, that such offender (not being a female) be punished by whipping, at such time during his imprisonment, and at such place within their jurisdiction, as according to the nature of the offence they in their discretion shall deem to be expedient. (*a*)

§ VII. Duties of Constables and Peace Officers. Penalties for Neglect.

Penalty on officers neglecting their duties, &c.

By stat. 5 *G.* 4. *c.* 83. § 11. in case any constable or other peace officer shall neglect his duty in any thing required of him by this act, or in case any person shall disturb or hinder any constable or other peace officer in the execution of this act, or shall be aiding, abetting, or assisting therein, and shall be thereof convicted upon the oath of one or more credible witness or witnesses before one or more justice or justices of the peace where such offence shall be committed, every such offender shall for every such offence forfeit any sum not exceeding 5*l.*; and in case such offender shall not forthwith pay such sum so forfeited, the same shall be levied by distress and sale of the offender's goods, by warrant from such justice or

(*a*) Before this act *one justice* might under stat. 17 *G.* 2. *c.* 5. § 7. order a rogue and vagabond to be publicly whipped. The form and manner of such public whipping may perhaps be best collected from the provisions of former vagrant acts. By stat. 22 *H.* 8. c. 12. the vagrant was to be *carried to some market town or other place, and there tied to the end of a cart naked, and beaten with whips throughout such market town or other place, till his body should be bloody by reason of such whipping.* By stat. 39 *El.* c. 4. § 3. he was to be *stripped naked from the middle upwards, and only whipped, till his body should be bloody.*

justices; and if sufficient distress cannot be found, it shall be lawful to and for one or more such justice or justices to commit the person so offending to the house of correction, there to be kept for any time not exceeding 3 calendar months, or until such fine be paid; and the said justice or justices shall cause the said fine, when paid, to be forthwith delivered to the treasurer of the county, riding, division, or place where such offence shall have been committed, to be by him added to and used as part of the stock of the said county, riding, division, or place. 5 G. 4. c. 83.

By § 12. in case any constable or other peace officer shall be convicted before any one or more justice or justices of the peace, for any neglect of any duty required of him by this act, or of any disobedience of any lawful warrant or order of any justice or justices of the peace issued under the provisions of this act, and in case any two or more justices of the peace shall impose any fine, or direct any penalty to be paid by such officer, under and by virtue of the powers given to justices of the peace by stat. 33 *G.* 3. *c.* 55. intituled, *An act to authorize justices of the peace to impose fines upon constables, overseers, and other peace or parish officers, for neglect of duty, and on masters of apprentices for ill-usage of such their apprentices, and also to make provision for the execution of warrants of distress granted by magistrates*, or under any other powers enabling such justices in that behalf, then and in every such case it shall be lawful for such justice or justices, upon conviction of any such offender, to reimburse and allow to the person or persons on whose complaint or information such offender shall have been convicted all necessary costs and expences which such person or persons may thereby have incurred, or by any appeal made in consequence thereof, by making an order under his or their hands and seals upon the treasurer of the county, riding, division, or place, to pay to such person or persons the amount of such costs and expences, on producing the said order and giving a receipt for the same, and the same shall be allowed the said treasurer in his account.

On conviction of officers, &c. justices to make order for payment of expences of prosecution.

33 G. 3. c. 55.

§ VIII. Power to search Lodging Houses.

By stat. 5 *G.* 4. *c.* 83. § 13. It shall be lawful for any justice of the peace, upon information on oath before him made, that any person hereinbefore described to be an idle and disorderly person, or a rogue and vagabond, or an incorrigible rogue, is, or is reasonably suspected to be, harboured or concealed in any house kept or purporting to be kept for the reception, lodging, or entertainment of travellers, by warrant under his hand and seal to authorise any constable or other person or persons to enter at any time into such house, and to apprehend and bring before him or any other justice of the peace every such idle and disorderly person, rogue, and vagabond, and incorrigible rogue as shall be found therein, to be dealt with in the manner hereinbefore directed.

Lodging houses, &c. suspected to conceal vagrants may be searched, and suspected persons brought before a justice

5 G.4. c.83.

§ IX. Certificates to ask Alms.

Visiting justices of gaols, &c. empowered to grant certificates for enabling persons discharged from prison to receive alms in their route.

By stat. 5 *G.* 4. *c.* 83. § 15. Nothing herein contained shall extend or be construed to extend so as to restrain, hinder, or prevent any visiting justice of any county gaol, house of correction, or other prison, from granting a certificate or other instrument for enabling any person discharged from a county gaol, house of correction, or other prison, to have or receive alms or relief in or upon his or her route, to his or her place of settlement; provided that such certificate be made and drawn up in compliance with the directions and provisions of any act or acts of parliament for the better regulation and management of gaols, houses of correction, or prisons. [See the form, stat. 4 *G.* 4. *c.* 64. *Sched.* B. Vol. II. p. 754.] And if any person, to whom any such certificate or instrument shall be delivered, shall act in any manner contrary to the directions or provisions of such certificate or instrument, or shall loiter upon his or her route, or shall deviate therefrom, every such person shall be and be deemed to be a rogue and vagabond within the provisions and directions of this act, and shall be punished accordingly.

Justices not to grant certificates enabling persons to ask relief on route, except to soldiers and sailors. 43 G.3. c.61. other persons asking alms to be deemed rogues and vagabonds.

By § 16. From and after the passing of this act, (21st *June* 1824,) no justice of the peace, mayor, or other magistrate shall grant to any person, other than a person entitled thereto under and by virtue of an act passed in the forty-third year of the reign of his late majesty king *George* the Third, intituled *An act for the relief of soldiers, sailors, and marines, and of the wives of soldiers in the cases therein mentioned, so far as relates to* England, any certificate or other instrument enabling such person to ask alms or relief in their route to any place, or for any other purpose whatever; and every person asking alms or relief under and by virtue of any certificate or other instrument hereby prohibited, is liable to be declared to be an idle and disorderly person in like manner, as if he or she had possessed no such certificate or other instrument as aforesaid.

§ X. Form of Conviction.

Form of conviction under this act.

By stat. 5 *G.* 4. *c.* 83. § 17. No proceeding to be had before any justice or justices of the peace under the provisions of this act shall be quashed for want of form; and every conviction of any offender as an idle and disorderly person, or as a rogue and vagabond, or as an incorrigible rogue, under this act, shall be in the form or to the effect following, or as near thereto as circumstances will permit; (that is to say,)

——— } to wit. } *BE it remembered, that on the* ——— *day of* ———, *in the year of our Lord* ———, *at* ——— *in the county of* ———, A. B. *is convicted before me* C. D., *one of his majesty's justices of the peace in and for the said county, of being an idle and disorderly person* [or *a rogue and vagabond,* or *an incorrigible rogue*] *within the intent and meaning of the statute made*

in the fifth year of the reign of his majesty king George *the fourth, intituled* An Act, [here insert the title of this Act;] *that is to say, for that the said* A. B. *on the* ——— *day of* ————, *at* ————, *in the said county,* [here state the offence proved before the magistrate,] *and for which said offence the said* A. B. *is ordered to be committed to the house of correction at* ————, *there to be kept to hard labour for the space of* ————, [or *until the next general or quarter sessions.*] *Given under my hand and seal the day, year, and at the place first above written.* 5 G. 4. c. 83.

And the justice or justices of the peace before whom any such conviction shall take place shall, and he and they is and are hereby required to transmit the said conviction to the next general or quarter sessions of the peace, to be holden in and for the county, riding, division, or place wherein such conviction shall have taken place, there to be filed and kept on record; and a copy of the conviction so filed, duly certified by the clerk of the peace, shall and may be read as evidence in any court of record, or before any justice or justices of the peace acting under the powers and provisions of this act.

Conviction to be transmitted to the sessions, and a copy thereof to be evidence.

§ XI. Appeal.

By stat. 5 *G.* 4. *c.* 83. § 14. Any person aggrieved by any act or determination of any justice or justices of the peace out of sessions, in or concerning the execution of this act, may appeal to the next general or quarter sessions for the county, riding, division, or place, in and for which such justice or justices shall have so acted, giving to the justice or justices of the peace, whose act or determination shall be appealed against, notice in writing of such appeal, and of the ground thereof, within seven days after such act or determination, and before the next general or quarter sessions, and entering within such seven days into a recognisance, with sufficient surety, before a justice of the peace for the county or place in which such person shall have been convicted, personally to appear and prosecute such appeal; and upon such notice being given, and such recognisance being entered into, such justice is hereby empowered to discharge such person out of custody; and the court at such general or quarter sessions shall hear and determine the matter of such appeal, and shall make such order therein as shall to the said court seem meet, and in case of the dismissal of the appeal, or the affirmance of the conviction, shall issue the necessary process for the apprehension and punishment of the offender, according to the conviction.

Persons aggrieved may appeal to the next sessions.

§ XII. Actions.—Limitations.—Treble Costs.—General Issue, &c.

By stat. 5 *G.* 4. *c.* 83. § 18. in all cases where an action shall be brought against any justice of the peace, constable, or other person, for or on account of any matter or thing whatsoever done or commanded by him in the execution of his duty or office

Justices, &c. to have treble costs if judgment be in their favour.

5 G.4. c.83. under this act, such justice, constable, or other person, if he shall have judgment in his favour, shall have treble costs awarded to him by the court, unless the judge shall certify that there was a reasonable cause for such action.

Limitation of actions. By § 19. Every such action shall be commenced within three calendar months after the cause of action or complaint shall have arisen, and not afterwards; and if any person or persons shall be sued for any matter or thing which he, she, or they shall have done in the execution of this act, he, she, or they may plead the general issue, and give the special matter in evidence. General issue.

§ XIII. Removal of Convicts to their Settlements.

Persons convicted under this act to be chargeable to the parish in which they shall reside. By stat. 5 *G*.4. *c*.83. §20. Every person who under the provisions of this act shall have been convicted as an idle and disorderly person, or as a rogue and vagabond, shall be deemed to be actually chargeable to the parish, township, or place in which such person shall reside; and such person shall be liable to be removed to the parish of his or her last legal settlement, by the order of two justices of the peace of the division or place in which such person shall reside.

§ XIV. General Saving.

Persons committing offences under former acts to be punished under this act. By § 21. Wherever by any act or acts of parliament now in force it is directed that any person shall be punished as an idle and disorderly person, or as a rogue and vagabond, or as an incorrigible rogue, for any offence specified in such act or acts, and not hereinbefore provided for by this act, in every such case, whether such person shall or shall not have committed any offence against this act, every such person shall be punished under the provisions, powers, and directions of this act.

§ XV. Exemptions from the Vagrant Law.

43 G.3. c.61. 58 G.3. c.92. 5 G.4. c.13. By stat. 43 *G*. 3. *c*. 61. soldiers, sailors, mariners, and the wives of soldiers therein mentioned are relieved against the penalties of the vagrant acts. (*a*) Its provisions, and those of stat. 58 *G*. 3. *c*. 92., 5 *G* 4. *c*. 13. § 115. (*Mutiny act*) are stated, tit. Military Law, Vol. III. p. 394 to 397.

A. (A.) Information against an idle and Disorderly Person on stat. 5 *G* 4. *c*. 83. § 3. p. 565.

County of ——— } to wit. *THE complaint and information of* A. I. *one of the overseers of the poor of the parish of* ———, *in the county of* ———, *taken upon oath this* ——— *day of* ——— *before me*, J.P. *esquire*, *one of his majesty's justices of the peace in and for the said county*, *Who saith that* A. O. *of the same parish*, *labourer*, *being a person able to work*, *and thereby* [or, *by other*

(*a*) By stat. 52 *G*. 3. *c*. 31. stat. 39 *El*. *c*. 17. "against wandering persons pretending to be soldiers or mariners," is repealed.

means, as the case may be], *to maintain himself and family, hath wilfully refused* [or, *neglected*] *so to do, by which wilful default* [or, *neglect*] *they are become chargeable to the said parish, and are now actually chargeable thereto, and have been for the space of* ——— *and upwards*, [as the case may be,] *whereupon he the said* A. I. *prays that he the said* A. O. *may be punished as an idle and disorderly person*, [or, as the case may be].

A. I.

Sworn, &c. before me.
J. P.

(B) Warrant to apprehend thereupon. B.

County of ——— to wit. } To the constable of the parish of ———, and to all constables and others his Majesty's officers of the peace for the said county of ———.

FORASMUCH *as* A. I., *one of the overseers of the poor of the parish of* ———, *in the said county, hath this day made complaint and information upon oath before me*, J. P. *esquire, one of his majesty's justices of the peace in and for the said county, that* A. O. *of the same parish, labourer, being a person able to work, and thereby* [or, *by other means* as the case may be,] *to maintain himself and family, hath wilfully refused* [or, *neglected*,] *so to do, by which wilful default* [or, *neglect*,] *they are become chargeable to the said parish of* ———, *and are now actually chargeable thereto, and have been for the space of* ——— *and upwards*, [as the case may be]: *These are therefore to command you in his said majesty's name, forthwith to apprehend and bring before me the body of the said* A. O. *to answer unto the said complaint, and to be further dealt withal according to law. Herein fail you not. Given under my hand and seal this* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———.

(C.) Examination of a Vagrant on stat. 5 G. 4. c. 83. § 4. p. 567. C.

County of ——— to wit. } THE *examination of* A. O., *a rogue and vagabond taken on oath before me* ———, *one of* H. M.'s *justices of the peace, in and for the said county, the* ——— *day of* ———, *in the year of our Lord*, 18 ———.

Who on his oath saith, that he was born at ——— [and so trace out the history of his life so far forth as to ascertain his last legal place of settlement.]

(D.) Commitment of an Idle and Disorderly Person under stat. 5 G. 4. c. 83. § 3. p. 566. D.

County of ——— to wit. } To the constable of ——— in the said county, and to the keeper of the house of correction at ———, in the said county ———.

WHEREAS A. V. *was this day duly convicted before me* ———, *one of the justices of our lord the king, assigned to keep the peace of our said lord the king in and for the said county of* ———, *and also to hear and determine divers felonies, trespasses and other misdemeanors in the said county committed, of being an idle and disorderly person, for that he, on the* ——— *day of* ———, *in*

the year of our Lord ———, at ———, in the parish of ———, in the said county, did [state act of vagrancy, as the case may be], *contrary to the form of the statute in such case made and provided, and was by me adjudged to be committed for the said offence to the house of correction, there to be kept to hard labour for* [any time not exceeding one calendar month], *according to the form of the said statute: These are therefore to command you the said constable, to convey the same* A. V. *to the said house of correction, and him to deliver to the keeper thereof, together with this warrant. And I do hereby command you the said keeper, to receive the said* A. V. *into your custody, in the said house of correction, and him there safely keep to hard labour for* —— [as above]. *And for so doing this shall be your sufficient warrant. Given under my hand and seal at* ———, *this* ——— *day of* ———, *in the* ——— *year of the reign of his present majesty king* George *the fourth, and in the year of our Lord one thousand eight hundred and* ——.

E. (E.) Commitment of a Rogue and Vagabond under stat. 5 G. 4. c. 83. § 4. p. 567.

County of ——— to wit.	To the constable of ——— in the said county, and to the keeper of the house of correction at ——— in the said county.

WHEREAS A. V. *was this day duly convicted before me* J. P. *esquire, one of the justices of our lord the king assigned to keep the peace of our said lord the king in and for the said county of* ———, *as a rogue and vagabond,* [or, *of being an idle and disorderly person,* as the case may be], *for that he the said* A. V. *on the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———, *at* ———, *in the parish of* ———, *in the said county did* [here state the act of vagrancy of which the offender is convicted,] *contrary to the form of the statute in such case made and provided; and was by me adjudged to be committed for the said offence to the house of correction, there to be kept to hard labour for the space of* ———(*a*)*: These are therefore to command you the said constable to convey the said* A. V. *to the said house of correction, and him to deliver to the keeper thereof, together with this warrant. And I do hereby command you the said keeper to receive the said* A. V. *into your custody in the said house of correction, and him there safely keep to hard labour for the space of* ———*;* [if the commitment be to the next sessions say, *until the next general or quarter sessions of the peace to be holden at* ——— *in and for the said county of* ———, *then and there to be further dealt with according to law, and have you him then there, together with this precept,* (*b*) or, *until he the said* A. V. *shall be discharged by due course of law;*] *and for so doing this shall be*

(*a*) If the offender be an "idle and disorderly person," he may be committed to be kept to hard labour, for any time *not exceeding one calendar month; if a* "rogue and vagabond," to be kept to hard labour for any time *not exceeding three calendar months. Vide* § 3, 4. *ante*, p. 565, 566.

(*b*) According to the observations of *Le Blanc* J. in *R.* v. *the Justices of Staffordshire*, 12 *East*, 576. under stat. 17 *G.* 2. *c.* 5. the conviction and commitment were always in the same instrument.

your sufficient warrant. Given under my hand and seal at ——— in the said county of ———, this ——— day of ———, in the ——— year of the reign of his present majesty king George *the fourth, and in the year of our Lord one thousand eight hundred and ———.*

(F.) Recognizance to prosecute a Vagrant at the Sessions, on stat. 5 *G.* 4. *c.* 83. § 9. p. 569. F.

County of ——— to wit. } *BE it remembered, that on the ——— day of ———, in the ——— year of the reign of our lord* George *the fourth of the United Kingdom of* Great Britain *and* Ireland *king, defender of the faith,* A. B. *of ——— in the said county of ——— personally came before me,* J. P. *esquire one of the justices of our said lord the king, assigned to keep the peace in and for the said county, and acknowledged himself to owe to our said lord the king the sum of ——— pounds of good and lawful money of* Great Britain, *to be made and levied of his goods and chattels, lands and tenements, to the use of our said lord the king, his heirs and successors, if he the said* A. B. *shall fail in the condition underwritten:—*

The condition of this recognizance is such, that if the above bound A. B. *shall personally appear at the next general* [or, *quarter*] *sessions of the peace to be holden at ——— in and for the said county, and then and there prosecute and give evidence against* A. V. *for,* [here state the act of vagrancy for which the offender is committed,] *and shall not depart the court without leave thereof; then the above-written recognizance to be void, or else to remain in its full force. Taken and acknowledged the day and year first above-written before me,*

J. P.

Vellum. See **Stamps**, *ante.*

Venire. See **Process**, Vol. III.

Verdict. See **Jurors**, Vol. III.

Verjuice. See **Excise**, Vol. II.

Victuallers. See **Alehouses**, Vol. I.

Vinegar. See **Excise**, Vol. II.

Volunteer Corps. See **Military Law**, Vol. III.

Wages. See **Servants**, *ante.*

Waif. See **Estray**, Vol. I.

Warrant.

IF a justice see a felony or other breach of the peace committed in his presence, he may in his own person apprehend the felon. And so he may by word command any person to apprehend him, and such command is a good warrant without writing: but if the same be done in his absence, then he must issue his warrant in writing. 2 *Hale*, 86. *Dalt. c.* 169. p. 401.

Concerning which we will shew,

§ I. *For what Causes it may be granted.*
II. *What is to be done previously to granting it.*
III. *How far it is grantable on Suspicion.*
IV. *The Form of it.*
V. *Indorsement of a Warrant in another County.*

§ I. For what Causes it may be granted.

For what cause a warrant may be granted.

There seems to be no doubt but that a warrant may be lawfully granted by any justice for treason, felony, or *præmunire*, or any other offence against the peace; also it seems clear that wherever a statute gives to any one justice a jurisdiction over any offence, or a power to require any person to do a certain thing ordained by such statute, it impliedly gives a power to every such justice to make out a warrant to bring before him any person accused of such offence, or compellable to do any thing ordained by such statute; for it cannot but be intended that a statute, giving a person jurisdiction over an offence, doth mean also to give him the power incident to all courts of compelling the party to come before him. 2 *Haw. c.* 13. §. 15. 12 *Rep.* 131. *b.* *R.* v. *Simpson*, 10 *Mod.* 248. *Bane* v. *Methuen*, 2 *Bing.* 63. *ante, tit.* Trespass, p. 557.

Where a summons is more proper.

But in cases where the king is no party, or where no corporal punishment is appointed, as in cases for servants' wages, and the like, it seemeth that a *summons* is the more proper process, and for default of appearance the justice may proceed; and so indeed oftentimes it is directed by special statutes.

Indeed as a warrant deprives a man of his liberty, a summons only ought to issue, and not a warrant, without information upon oath. 2 *Barnard.* 34. 77. 101.

§ II. What is to be done previously to granting it.

Complaint to be on oath.

It is convenient, though not always necessary, that the party who demands the warrant be first examined on oath touching the whole matter whereupon the warrant is demanded, and that such examination be put into writing. 1 *Hale*, 582. 2 *Hale*, 111.

§ III. How far it is grantable on Suspicion.

Warrant upon suspicion.

Lord *Hale* proves at large, contrary to the opinion of Lord *Coke*, (4 *Inst.* 177.) that a justice hath power to issue a warrant to

apprehend a person suspected of felony, before he is indicted; and that though the original suspicion be not in himself but in the party that prays his warrant. 2 *Hale*, 107—110. See Vol. III. p. 156.

For the justices are judges of the reasonableness of the suspicion, and when they have examined the party accusing touching the reasons of his suspicion, if they find the causes of suspicion to be reasonable, it is now become the justices' suspicion as well as theirs. 2 *Hale*, 79, 80.

And in another place, speaking of this opinion of Lord *Coke*, he delivers himself seemingly with a kind of warmth not usual to him: "I think," says he, "the law is not so, and the constant practice in all cases hath obtained against it, and it would be pernicious to the kingdom if it should be as Lord *Coke* delivers it; for malefactors would escape unexamined and undiscovered, for a man may have a probable and strong presumption of the guilt of a person, whom yet he cannot positively swear to be guilty." 1 *Hale*, 579.

Mr. *Hawkins* likewise seems to be of the same opinion against Lord *Coke*, but delivereth himself with his wonted caution and candour. "It seems probable," he says, "that the practice of justices of the peace in relation to this matter is now become a law, and that a justice may justify the granting of a warrant for the arrest of any person, upon strong grounds of suspicion, for a felony, or other misdemeanor, before any indictment hath been found against him; yet insomuch as justices claim this power rather by connivance than any express warrant of law, and since the undue execution of it may prove so highly prejudicial to the reputation, as well as the liberty of the party, a justice cannot well be too tender in his proceedings of this kind, and seems to be punishable not only at the suit of the king, but also of the party grieved, if he grant any such warrant groundlessly and maliciously, without such a probable cause as might induce a candid and impartial man to suspect the party to be guilty." 2 *Haw.* c. 13. § 18.

But a general warrant, upon a complaint of robbery, to apprehend *all persons suspected*, and to bring them before a justice, hath been ruled void; and false imprisonment lies against him that issues such a warrant. 1 *Hale*, 580. 2 *Hale*. 112. **General warrant void.**

So a general warrant to apprehend the authors, printers, and publishers of a libel, without naming them, is illegal. *Money* v. *Leach*, 1 *Blac. Rep.* 555. 19 *Howell's St. Tr.* 1002.

But it appears to be now clearly established, that a justice of peace has authority to issue his warrant for the arrest of a party charged with having published a libel, and upon the neglect of the party so arrested to find sureties, may commit him to prison, there to remain till he be delivered by due course of law. *Butt.* v. *Conant*, 1 *Brod. & Bing.* 548. See also *S.C.* Vol. III. tit. Libel, p. 296.

§ IV. The Form of it.

Mr. *Dalton* says, the warrant is the better if it bear date of the place where it is made. *Dalt.* c. 169. *p.* 402.

And Lord *Hale* says, the place, though it must be alleged in pleading, need not be expressed in the warrant. 2 *Hale*, 111.

And Mr. *Hawkins* says, it is safe, but perhaps not necessary, in the body of the warrant to shew the place where it was made: yet it seems necessary to set forth the county, in the margin at least, if it be not set forth in the body. 2 *Haw. c.* 13. § 23.

It may be directed to the sheriff, bailiff, constable, (*a*) or to any indifferent person by name who is no officer; for the justice may authorise any one to be his officer, whom he pleases to make such; yet it is most advisable to direct it to the constable of the precinct wherein it is to be executed, for no other constable, and *à fortiori*, no private person is compellable to serve it. 2 *Haw. c.* 13. § 27. *Dalt. c.* 169. p. 404. 2 *Hale*, 110.

But in the case of an act of parliament, it is said that if the act direct that a justice shall grant a warrant, and do not say to whom it shall be directed, by consequence of law it must be directed to the constable, and it cannot be directed to the sheriff, unless such power be given in the act. 2 *Ld. Raym.* 1192. 2 *Salk.* 381.

The warrant may be styled in divers manners; as, 1. In the name of the king; and yet the *teste* must be under the name of the justice that grants it out. Or, 2. It may be styled or made only in the name of the justice. Or, 3. It may be made without any style, and only under the *teste* of the justice, or only subscribed by him. As followeth:

In the King's Majesty's Name.

County of ——— to wit. } GEORGE *the fourth, by the Grace of God, of the united kingdom of* Great Britain *and* Ireland, *king, defender of the faith: To our sheriff of the county of* ———, *to the high constable of the hundred of* ———, *in the same county, and constables of the town of* ——— *in the same county, and to all and singular our bailiffs and ministers in the same county, as well within liberties as without, greeting:*

Forasmuch as A. I. *of* ——— *hath come before* J. P. *esquire, one of our justices assigned to keep our peace within the said county, and hath*, &c.

(Concluding it in the justice's name, as thus: *Witness the said* J. P. *at* ———, the ——— *day of* ———.)

Note. That wheresoever the warrant is made in the king's name, there it ought to be directed to all ministers, as well within liberties as without, for the king is made a party. And so it may be done in all other warrants, especially for felony, or for the peace and good behaviour, because it is the service of the king. *Dalt. c.* 171. p. 415.

(*a*) In *R.* v. *Weir* and others, *H.* 1823. 1 *B.* & *C.* 288. a warrant of distress for a poor's rate, directed to the constables of *Woolwich*, without naming them as individuals, was held not legally executed by them out of their jurisdiction, *viz.* in *St. Paul's, Deptford.* But now by stat. 5 *G.* 4. *c.* 18. § 6. constables may execute warrants out of *their* precincts, provided the place in which such warrants are executed, be within the jurisdiction of the justice granting or backing the same. See Vol. I. tit. Arrest, § IV.

Or thus in the Name of the Justice himself.

County of ——— to wit. } *J. P. esquire, one of the justices of our lord the king, assigned to keep the peace within the said county: To the sheriff of the said county, to the bailiff or constable of the hundred of ———, within the said county, to the petty constables of the town of ———, within the said hundred and county, and to all other the ministers and officers of our said lord the king within the said county, and to every of them, greeting:*

Forasmuch as, &c. *Given under my hand and seal the ——— day of,* &c. Dalt. c. 174. p. 416.

The following is the common Form of a Warrant generally used.

County of ——— to wit. } To the constable of S ———, and all other peace officers in the said county of Stafford.

FORASMUCH as A. I. *of B ——— in the said county, yeoman, hath this day made information and complaint upon oath before me* G. C. *esq., one of his majesty's justices of the peace, in and for the said county, that* A. O. *of* C. *in the said county, labourer, on the ——— day of ——— instant, at ———, in the said county,* [here state the crime and offence charged in the information.]

These are therefore to command you, in his majesty's name forthwith to apprehend and bring before me, or some other of his majesty's justices of the peace, in and for the said county, the body of the said A. O. *to answer unto the said complaint, and to be further dealt withal according to law. Herein fail you not. Given under my hand and seal, the ——— day of ———, in the year of our lord one thousand eight hundred and ———.*

To contain the cause whereupon granted.

Regularly, the warrant, especially if it be for the peace or good behaviour, or the like, where sureties are to be found or required, ought to contain the special cause and matter whereupon it is granted to the intent that the party upon whom it is to be served may provide his sureties ready, and take them with him to the justice to be bound for him; but if the warrant be for treason, murder, or felony, or other capital offence, or for great conspiracies, rebellious assemblies, or the like, it hath been said that it needeth not to contain any special cause, but the warrant of the justice may be to bring the party before him, *to make answer to such things or matters generally as shall be objected against him on the king's behalf. Dalt. c.* 169. 2 *Haw. c.* 13. § 25. 2 *Hale,* 111.

But Mr. *Lambard* says, every warrant made by a justice of the peace ought to comprehend the special matter upon which it proceedeth; even as all the king's writs do bear their proper cause in their mouth with them: and as for the form that is commonly used, *to answer to such things as shall be objected,* and such like, they were not fetched out of the old learned precedents, but lately brought in by such as either knew not, or cared not, what they writ. *Lamb.* 87.

To mention the name of the party to be attached.

The warrant ought regularly to mention the name of the party to be attached, and must not be left in general, or with blanks to be filled up by the party afterwards. 2 *Hale*, 114. *Dalt.* c. 169. p. 402.

The same rule obtains in warrants on civil actions. *Burslem* v. *Fern*, 2 *Wils.* 47.

Altering a warrant.

Therefore, where the sheriff having directed a warrant to *A.* by name, and all his other officers; *B*'s name, (another of the sheriff's officers) was inserted after the warrant was signed and sealed by the sheriff; and therefore an arrest by *B.* was holden illegal. *Housin* v. *Barrow*, 6 *T. R.* 122. In this case Ld. *Kenyon* C. J. said, "I remember a case of a very serious nature happening some years ago from the circumstance of altering a warrant; a gentleman who had obtained a warrant directed to a sheriff's officer to arrest his debtor, struck out the officer's name and inserted his own in its stead; and he was shot by the defendant in arresting him; the defendant was tried for the murder, and on the trial a special verdict was found; but it was held not to be murder, because the arrest was illegal, and that at the most it was only manslaughter."

May issue to bring the party before any justice of the county.

The warrant may issue to bring the party before the justice who granted the warrant specially, and then the officer is bound to bring him before the same justice; but if the warrant be to bring him before any justice, then it is in the election of the officer to bring him before what justice of the county he thinks fit, and not in the election of the prisoner. 1 *Hale*, 582. 2 *Hale*, 112.

Ought to state day and year where made, and place where offence committed.

It ought to set forth the year and day wherein it is made, that in an action brought upon an arrest by virtue of it, it may appear to have been prior to such arrest; and also, in case where the statute directeth the prosecution to be within such a time, that it may appear that the prosecution is commenced within such time limited: likewise, where a penalty is given to the poor of the parish where the offence shall be committed, or the like, it ought to specify the place where the offence was committed. 2 *Haw.* c. 13. § 22.

Hand and seal of justice.

Finally, it ought to be under the hand and seal of the justice who makes it out. *Ib.* § 21.

But a warrant under the hand of the justice is sufficient without being under seal, unless particularly required by act of parliament. *Bull. N. P.* 83.; and *Padfield* v. *Cabbell*, *Will.* 411.

How long continues in force.

The warrant of a magistrate is not returnable at any particular time, but continues in force until it is fully executed and obeyed, though it were seven years, provided the magistrate so long live. *Per Ld. Kenyon C. J. Dickenson* v. *Brown*, *Peake's N. P.* 234. 1 *Esp.* 218. *S. C.*

Warrant to arrest that party may be bound to appear at next sessions.

A warrant to arrest the party, "*to the end that he may become bound, &c. to appear at the next sessions, &c.*" means the next sessions after the arrest, and not after the date of the warrant. Therefore the officer executing it may justify an arrest after the sessions next ensuing the date of the warrant. *Mayhew* v. *Parker and others.* 8 *T. R.* 110.

§ V. Indorsement of a Warrant in another County.

[24 G. 2. c. 55.—13 G. 3. c. 31.—44 G. 3. c. 92.—45 G. 3. c. 92.—48 G. 3. c. 58.—54 G. 3. c. 186.]

By stat. 24 *G.* 2. *c.* 55. § 1. If any person, against whom a warrant shall be issued, shall escape, go into, reside, or be in any place out of the jurisdiction of the justice granting the warrant, either before or after the issuing thereof; any justice for the county or place, where such person shall so escape or be, upon proof on oath of the hand-writing of the justice granting such warrant, shall indorse his name thereon; which shall be a sufficient authority to the person bringing such warrant, and to all other persons to whom the same was originally directed, to execute the same in such other county or place, and to carry the offender before the justice who indorsed the warrant, or some other justice or justices of that county, if the offence be bailable, and the offender be ready to give bail for his appearance at the next assizes or sessions for the county or place where the offence was committed; and such justice or justices shall take bail accordingly, and shall deliver the recognizance, together with the examination or confession of the offender, and all other proceedings relating thereto, to the constable, or other person, who shall (on pain of 10*l.* to him who shall sue) deliver over the same to the clerk of assize, or clerk of the peace, where the offender is required to appear. And if the offence be not bailable, or he shall not give bail to the satisfaction of the justice before whom he is brought, the constable or other person shall carry the offender before a justice of the proper county or place where the offence was committed, there to be dealt with according to law.

24 G. 2. c. 55. Oath to be made of the justice's hand-writing.

The Form of which Indorsement may be thus:

County of ——— to wit. } *FORASMUCH as proof upon oath hath been made before me J. P. esquire, one of his majesty's justices of the peace for the said county of ———, that the name A. B. is of the hand-writing of the justice of the peace within mentioned; I do hereby authorise A. C. who bringeth to me this warrant, and all other persons to whom the said warrant is directed, to execute the same within the said county of ———. Given under my hand, the ——— day of ——— in the year ———.*

See other forms, 4 Chitt. Crim. L. 20.

And the justice may further order (if he think fit) the party, according as he shall appear bailable or not bailable upon the face of the warrant, to be brought before himself, or some other justice or justices of that county, or to be carried back into the county from whence the warrant did issue.

In *Rex* v. *Kynaston*, 1 *East*, 117. the court of K. B. held, that proof on oath of the hand-writing of the justice who granted the warrant, made before the justice of any other county to whom the same was tendered for indorsement, was sufficient to oblige him to indorse the same for execution within his jurisdiction, being of opinion that he had no discretion over the subject matter, and on affidavit of his refusal to indorse, granted a *mandamus* to compel him. Ld. *Kenyon* C. J. said, the

justices by whom the original warrant was issued had a discretion to exercise upon the matter submitted to them; but the magistrate who merely indorses the warrant of another under this act is not answerable for the legality of it, which remains at the hazard of him who first granted it.

13 G. 3. c. 31. Offenders escaping out of one kingdom into another.

By stat. 13 *G.* 3. *c.* 31. § 1. If any person against whom a warrant shall be issued by any justice in *England*, for any offence against the laws of *England*, shall escape or go into *Scotland*, the sheriff, or steward depute, or substitute, or any justice of the county or place where such person shall be, may indorse his name on the said warrant; which warrant, so indorsed, shall be a sufficient authority to the person bringing such warrant, and to all persons to whom it was originally directed, and also to all sheriffs' officers, stewards' officers, constables, and other peace officers where such warrant shall be so indorsed, to execute the same in the county or place where it is so indorsed, by apprehending the person against whom such warrant is granted, and to convey him to the county or place in *England* (being adjacent to *Scotland*) in which the offence was committed, before a justice of such county or place, to be there dealt with according to law; or, in case the offence was committed in the county not next adjacent to *Scotland*, then to convey him into any county of *England* adjacent to *Scotland*, before a justice there; who shall proceed with regard to such person, by indorsing the warrant, as by stat. 24 *G.* 2. *c.* 55., in like manner as if the person had been apprehended in the said county.

§ 2. If any person against whom a warrant shall be issued by the lord justice general, lord justice clerk, or any of the lords commissioners of justiciary, or by any sheriff, or steward depute, or substitute, or justice of the peace of *Scotland*, for any offence against the laws of *Scotland*, shall escape or go into *England*, any justice of the county or place where such person shall be, may indorse his name on the said warrant; which warrant, so indorsed, shall be a sufficient authority to the person bringing such warrant; and to all persons to whom it was originally directed, and also to all constables or other peace officers where such warrant shall be so indorsed, to execute the same in the county or place where it is so indorsed, by apprehending the person against whom such warrant is granted, and to convey him into the county or place in *Scotland* (being adjacent to *England*) where the offence was committed, before the sheriff or steward depute, or substitute, or a justice of such county or place, to be there dealt with according to law; or, in case the offence was committed in a county not next adjacent to *England*, then to convey him into any county of *Scotland* adjacent to *England*, before the sheriff or steward depute, or substitute, or a justice there; who shall proceed, with regard to such person according to the rules and practice of the law of *Scotland*, in like manner as if he had been apprehended in the said county.

Expences of removing prisoners.

§ 3. And the expence of removing such prisoners shall be repaid to the person defraying the same by the treasurer of the county in *England*, or by the sheriff, or steward depute, or substitute of the county in *Scotland*, in which the offence was committed; the amount of such expence being previously ascertained

upon oath before two justices of such county, and allowed and signed by them. 13 G.3. c.31.

§ 4. If any person having feloniously taken money, cattle, goods, or other effects in either parts of the U.K., shall afterwards have the same or any part thereof in his possession in the other part of the U. K., it shall be lawful to indict, try, and punish him for theft or larceny in that part of the U. K. where he shall so have such money, cattle, goods, or other effects in his possession, as if the same had been stolen there. Offenders removing their booty.

§ 5. And if any person, in either part of the U. K., shall knowingly *receive* or have any money, cattle, goods, or other effects, stolen, or otherwise feloniously taken in the other part of the U.K., he shall be liable to be indicted, tried and punished for the same in that part of the U.K. where he shall so receive or have the same, as if they had been originally stolen there. Person receiving such booty.

Stat. 44 *G*.3. *c*.92. §3. Enacts, that if any person against whom a warrant shall be issued by any of the judges of the court of K.B., or any justice of oyer and terminer, or gaol delivery, *or any justice of the peace*, or other person having authority to issue the same, *for any crime or offence* against the laws in force in *Ireland*, shall escape, go into, reside, or be in any place in *England* or *Scotland*, respectively, *any justice of the peace* of the county, stewartry, riding, division, city, liberty, town, or place in *England*, or *Scotland* respectively, whither or where such person shall escape, go into, reside, or be, may indorse his name on such warrant, which warrant so indorsed, shall be a sufficient authority to the person bringing such warrant, and to all persons to whom it was originally directed, and also to all constables or other peace officers of the place where such warrant shall be so indorsed, to execute the said warrant, in the place where it is so indorsed, by apprehending the person against whom such warrant is granted, and to convey him by the most direct way into *Ireland*, and before one of the justices of the peace of the county in *Ireland* living near the place and in the county where he shall arrive; which justice is to proceed with regard to such person as if he had been legally apprehended in the said county in *Ireland*. 44 G. 3. c.92. Offenders escaping from Ireland into G. B., may be apprehended and conveyed to Ireland.

By § 4. The same provision is made as to offenders escaping from *England* or *Scotland* into *Ireland*, being apprehended and conveyed back again to *England* or *Scotland*.

Stat. 45 *G*.3. *c*.92. § 1. after reciting stats. 13 *G*.3. *c*.31. and 44 *G*.3. *c*.92. and that there is no provision in the said acts for admitting to bail persons so apprehended for bailable offences, enacts, that in case any person shall be apprehended in one of the parts of the U.K. [of *England*, *Scotland*, and *Ireland*], for offences committed in either of the other parts of the same, under any warrant indorsed as provided by either of the said acts, such person may be taken before the justice who indorsed the warrant, or before some other justice of the county or place where the same was indorsed; and in case the offence be bailable in law, and such offender shall be willing and ready to give bail for his appearance, according to the exigence of the warrant, such justice may proceed with such offender, and take bail for him, according to the exigence of the said warrant, in the same manner as the justice who originally issued the same might have done. And such justice or justices so taking bail as aforesaid, shall take the 45 G.3. c.92. Offenders bailable to be admitted to bail. How the recognisance or bail is to be taken.

45 G. 3. c. 92. recognisance or bail bond of the said offender, and of his bail in duplicate, and shall deliver one to the constable or officer, who is to receive the same, and to deliver such recognisance or bail bond to the clerk of the crown, or clerk of the peace, or other proper officer for receiving the same, belonging to the court in which such offender shall be bound to appear; and the same shall be of the like force as if entered into before a justice of the county or place where the offence was committed: and the justices so taking bail as aforesaid, shall transmit the other of such duplicates to the court of exchequer of such part of the U.K. in which such bail shall be taken. And the court, in which any person so bound to appear shall forfeit his recognisance or bail-bond, may transmit a certificate testifying the forfeiture thereof under the seal of the court, or under the hand and seal of one of the justices of the same, to the proper court of exchequer; and such court of exchequer may, upon such certificate, levy the sum so forfeited. But if such offence be not bailable in law, or such offender shall not give bail for his appearance, according to the exigence of such warrant, the justices shall remand him to the custody of the constable or officer, who shall proceed to convey such offender into that part of the U. K. wherein the offence was committed.

How recognizance or bail-bonds are to be transmitted.

Offenders not bailable to be remanded.

Warrants not bailable must be so marked.

§ 2. And whereas it may happen by reason of the difference in the law prevailing in the U. K., that the justices before whom offenders may be brought, may not know whether the offence be, or be not bailable; enacts, that in case any person suing out such warrant, shall sue by affidavit, or otherwise, to the satisfaction of the justice granting such warrant, that it may be necessary to execute such warrant in a part of the U. K. different from that in which such warrant is issued, and it shall appear also to the justice that it is granted for an offence for which it would not be lawful for any justice to admit such offender to bail, such justice granting such warrant shall, upon the face of such warrant, write the words 'not bailable;' and in all cases in which such words shall not have been so written the justice before whom any offender may be brought, under such warrant so indorsed, may admit such offender to bail.

Provision to inforce the appearance on subpœnas or other process.

§ 3. In order to provide for the appearance of persons to answer in cases where warrants are not usually issued, and to give evidence in criminal prosecutions in every part of the U. K., enacts, that the service of every writ of subpœna, or other process upon any person, in any one of the parts of the U. K., requiring the appearance of such person to answer or give evidence, in any criminal prosecution, in any other parts of the same, shall be as effectual as if served in that part of the U. K. where the person served is required to appear; and in case the person so served shall not appear, the court out of which the same issued, upon proof of service, may transmit a certificate of such default under the seal of the court, or under the hand of one of the judges or justices of the same, to the court of K. B. in *England*, *justiciary* in *Scotland*, or K. B. in *Ireland*, according to the service, which court may respectively proceed against, and punish the person having made default, as if such person had refused to appear to a subpœna or other process issued out of such courts.

§ 4. But none of such courts shall so proceed, for default by not appearing to give evidence, unless it be made appear that *a reasonable and sufficient* sum to defray the expences of coming and attending to give evidence, and of returning from giving such evidence, had been tendered to such person at the time when such writ of subpœna or other process was served. 45 G. 3. c. 92.

Stat. 54 *G.* 3. *c.* 186. after reciting stats. 13 *G.* 3. *c.* 31. 44 *G.* 3. *c.* 92. and 45 *G.* 3. *c.* 92., repeals the 5th and 6th sections of the last mentioned act, and enacts, § 2. that all warrants issued in *England, Scotland,* or *Ireland* respectively, may and shall be indorsed and executed, and enforced and acted upon, in any part of the U. K., in like manner as is directed by stat. 13 *G.* 3. *c.* 31., in relation to warrants issued or granted in *England* and *Scotland* respectively, as fully and effectually as if all the provisions of the said acts were in this act severally and separately repeated and re-enacted and made part of this act, as to every part of the U. K., and as to all justices of the peace, sheriffs' officers, constables, or other officer or officers of the peace in *Ireland*, as well as in *England* and *Scotland* respectively. 54 G. 3. c. 186. Warrants issued in England, Scotland, or Ireland, may be indorsed and acted upon in either country, as by 13 G. 3. c. 31. § 1, 2.

§ 3. Judges in either country, are empowered to indorse letters of second diligence.

By stat. 48 *G.* 3. *c.* 58. § 2. reciting the provisions of stats. 13 *G.* 3. *c.* 31. and 45 *G.* 3. *c.* 92., and that it is expedient that like provisions should be made for the execution in *Scotland* of warrants issued by others than justices of peace in *England;* it is enacted, that all matters in the said acts, whereby the execution in *Scotland* of any warrant of any justice of peace, for any offence, is authorised and regulated, shall extend to all warrants issued by any of the justices of the K. B. in *England*, or of the courts of great sessions in *Wales*, or by any justice of oyer and terminer or gaol delivery, or other persons having authority to issue the same in *England*, for any crime or offence. 48 G. 3. c. 58.

Warrant, Execution of. See Arrest, Vol. I.

Warrant to search for Stolen Goods. See Search-Warrant, *ante*.

Watch.

[13 Ed. 1. st. 2. (*Wynt.*) c. 4. — 5 Ed. 3. c. 14. — 5 H. 4. c. 3. — 5 An. c. 31.]

WATCHING is properly intended of the night, and warding for the day time. *Dalt. c.* 104. p. 247. Watch and ward.

Watches are of three kinds:

That which is appointed by the statute of *Winchester*, c. 4. and is enforced by stat. 5 *H.* 4. *c.* 3. which is, *That from* Ascension-day *to* Michaelmas, *in every city, six men shall keep watch at every gate; in every borough, twelve men; every town, six or four, according to the number of the inhabitants, and shall watch the town continually all night, from the sun setting to the sun rising.* By the statute of Winchester. 13 Ed. 1. st. 2. c. 4.

This watch is to be set by the constable, and their power is this: *If any stranger do pass by them, he shall be arrested until*

morning, and if no suspicion be found, he shall go quit; and if they find cause of suspicion, they shall forthwith deliver him to the sheriff until he be acquitted in due manner. And if they will not obey the arrest, they shall levy hue and cry upon them.

Inhabitants.] It hath been resolved that a stranger, who is not an inhabitant, cannot hereby be compelled to keep watch. 2 *Haw. c.* 13. § 4.

It seems to be agreed that every inhabitant is bound to keep watch in his turn, or to find another. 2 *Haw. c.* 13. § 4.

But they are not compellable to watch at the will of the constable, but only when their turn cometh; which was the ancient custom at common law. *Dalt. c.* 104. p. 247.

And the watching and warding ought to be by men able of body, and sufficiently weaponed. *Ib.*

And therefore a woman required to watch may procure one to watch for her. *Comb.* 243.

Deliver him to the sheriff.] That is to the common gaol. 2 *Hale*, 96.

By the constable. 5 Ed. 3. c. 14.

But this watch only extends between *Ascension-day* and *Michaelmas;* but there is another watch that may be kept by the constable *ex officio*, which may extend to other times; as by stat. 5 *Ed.* 3. *c.* 14. for night-walkers, and persons suspicious by night or day. 2 *Hale*, 97.

And although a constable be not bound to any precise time for this kind of watch, nor punishable if he omit it, barely for the omission, if he be ready upon occasion to do his office when required in these cases, yet it is in his power to hold such watches as often as he pleases, and it is convenient and justifiable; and herein the watchmen are the ministers and assistants of the constable, and are under the same protection with him, and may act as he doth. 2 *Hale*, 97.

Yea it is holden, that every private person may, by the common law, arrest any suspicious night-walker, and detain him till he give a good account of himself. 2 *Haw. c.* 13. § 6. Vide Vol. I. p. 218.

By justices.

There is also another kind of watch, which is by authority of the justices of the peace, which also may be held at other times than the above statute of the 13 *Ed.* 1. appoints: and the watch thus appointed hath the same power as either of the former: and this seems to be within the power of any one justice, by the first assignment in the commission; but the safer way and more usual is, by order of sessions. *Lamb.* 186. 2 *Hale*, 97. *Dalt. c.* 104.

Persons taken by watchmen.

If a watchman take any one for suspicion of felony, he may inquire of his good name and fame, and if he find him to be of good name and fame, he may let him go, without being guilty of an escape. *Dalt. c.* 159.

And if a person will not obey the arrest of the watchmen, they may levy hue and cry upon him, that he may be taken; or else they may justify to beat him, for that he resisteth the peace and justice of the realm; and may also set him in the stocks for the same until the morning. *Dalt. c.* 104.

And the watchmen may deliver such persons to the constable, or may convey them to a justice to be examined, and to be bound over or committed, until they be acquitted in due manner. *Ib.*

Indemnity of watchmen.

A watchman hath a double protection of the law: 1. As an assistant to the constable, when the constable is present, or in the

watch; for so every man, who is assisting to the constable in the execution of his office, hath the same protection that the law gives to the constable. 2. Purely as a watchman set by order of law; and the law takes notice of his authority *sub eo nomine*, and therefore killing a watchman in execution of his office is murder. 2 *Hale*, 98. 3 *Inst.* 52. 9 *Rep.* 66.

And by stat. 5 *An.* c. 31. § 2. if a watchman be killed in endeavouring to apprehend a burglar, his executors shall be entitled to a reward of 40*l*. 5 An. c. 31.

If any person refuse to watch in his turn at the commandment of the constable, the latter may present the default at the assizes or sessions, or may complain thereof to any justice of the peace, who may bind the offender to the good behaviour, and so over to the next sessions. *Dalt.* c. 104. And he may be indicted for the refusal. 2 *Haw.* c. 13. § 4. Punishment for not watching.

But here it is to be noted, that in *Cro. Eliz.* 204. which Mr. *Dalton* cites for his authority in this matter, it is not said that the justice may bind him to the good behaviour, but only thus,—that he may inflict punishment upon the refuser.

By stat. 52 *G.* 3. *c.* 17. several provisions were enacted relative to the duty of watching and warding in places where disturbances then prevailed or were likely to prevail: but the continuance of that act was limited by stat. 58 *G.* 3. *c.* 52. to 20th *June* 1820. Continued by stat. 1 *G.* 4. *c.* 24. to 20th *June* 1824; and is now expired. 52 G. 3. c. 17.

Warrant for keeping of Watch.

County of ——— } To the constable of the hundred of ——— in the said county.

AT a general quarter sessions of the peace holden at ———, in and for the said county before us ———, esquires, justices of our lord the king, assigned to keep the peace within the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, you are hereby required forthwith to issue your warrant to the several petty constables within your said hundred, that they do cause watch to be kept by night, and ward by day, with able men, within and throughout their respective constablewicks, from the ——— day of ——— now next ensuing, unto the ——— day of ——— then next following; and that they do apprehend, or cause to be apprehended, all rogues, vagabonds, and other wandering, idle, and disorderly persons, and carry them before some of his majesty's justices of the peace in and for the said county, to be examined and further dealt withal according to law. Given under our hands and seals, the day and year first above written.

Commitment of a Person apprehended by the Watch.

County of ——— } To the constable of ——— and to the keeper of the house of correction at ———.

WHEREAS A. O. *was yesterday in the night taken by the watch set by the constable of ———, wandering abroad, and lodging in barns, out-houses, or in the open air, and is this day brought*

before me, J. P. esquire, one of the justices of our lord the king, assigned to keep the peace within the said county, and doth not now give a good account of himself before me. These are to require you the said constable of ——— *to convey the said* A. O. *to the said house of correction at* ——— *aforesaid, and to deliver him to the keeper thereof, together with this warrant. And I do hereby require you, the said keeper of the house of correction aforesaid, to receive the said* A. O. *into your custody in the said house of correction, and him there safely to keep to hard labour for*—[not exceeding three calendar months, 5 G. 4. c. 83. § 1.] *and have you him then there, together with this precept. Given under my hand and seal, at in the said* ———, *county, the* ——— *day of* ———, *in the* ——— *year of the reign of* ———.

Indictment for not watching.

County of ——— to wit. } *THE jurors of our lord the king upon their oath present, that* A.O. *of* ———, *in the said county, yeoman, on the* ——— *day of* ———, *in the* ——— *year of the reign of* ——— ———, *and long before and always after unto the day of the taking this inquisition, was and yet is an inhabitant of the town of* ——— *aforesaid, in the county aforesaid; and that the said* A. O. *then and there, to wit, on the said* ——— *day of* ——— *in the year aforesaid, at* ——— *aforesaid, in the county aforesaid, was duly summoned in his turn to watch with the constable of* ——— *aforesaid, in the night of the same day; nevertheless the said* A.O., *his duty in that behalf not regarding, did not watch in the said night of the same day in the year aforesaid, nor in any part of the said night, with the said constable at* ——— *aforesaid, in the county aforesaid, but did then and there utterly refuse so to do, and wilfully and obstinately therein did make default; in contempt of our said lord the king, and of his laws, and against the peace of our said lord the king, his crown and dignity.*

Watchmakers. See **Servants**, *ante*, p. 152.

Weights and Measures.

THE particular weights and measures of different sorts of goods may be seen under their respective titles; what is treated of here, is touching weights and measures in general.

III. *Proper Persons to be appointed to examine Weights and Balances.*
[35 G. 3. c. 102. — 37 G. 3. c. 143. — 55 G. 3. c. 43.]

IV. *Effect of Stat.* 5 *G.* 4. *c.* 74. *as to enforcing or repealing, &c. other Acts relating to Weights and Measures.*
[5 G. 4. c. 74.]

§ I. Of the different Kinds of Weights and Measures.

Notwithstanding the many statutes, 9 *H.* 3. *c.* 25.; 14 *Ed.* 3. *st.* 1. *c.* 12.; 27 *Ed.* 3. *st.* 2. *c.* 10.; 31 *Ed.* 3. *st.* 1. *c.* 2.; 13 *Ric.* 2. *st.* 1. *c.* 9.; 15 *Ric.* 2. *c.* 4.; 8 *H.* 6. *c.* 5.; 11 *H.* 7. *c.* 4.; 12 *H.* 7. *c.* 5. (*a*) which have enacted that there shall be but one weight and one measure throughout the realm, there always have been and still are two kinds of weights used in *England*, and both warrantable, the one by law, and the other by custom; but they are for several sorts of wares or commodities; for there is *troy* weight and *avoirdupois*. *Dalt.* c. 112. **Divers weights.**

Troy weight is by law; and thereby are weighed silk, gold, silver, pearl, and precious stones. And this hath to the pound twelve ounces. *Ib.* **Troy weight.**

Avoirdupois (which, in *French*, is as much as to say, to have full weight,) was by custom yet: confirmed by stat. 13 & 14 *C.* 2. *c.* 26. (repealed by stat. 36 *G.* 3. *c.* 86. § 19.); and thereby are weighed all kinds of grocery wares, drugs, butter, cheese, flesh, wax, pitch, tar, tallow, wool, hemp, flax, iron, steel, lead, and all other commodities which bear the name of garbel, and whereof issueth a refuse or waste (and also bread by stat. 31 *G.* 2. *c.* 29.). And this hath to the pound sixteen ounces; and twelve pounds over are allowed to every hundred. *Ib.* **Avoirdupois weight.**

And by stat. 13 & 14 *W.* 3. *c.* 5. A legal *Winchester* bushel, according to the standard in the *Exchequer*, shall be round, with a plain bottom eighteen and a half inches wide throughout and eight inches deep. **13 & 14 W. 3. c. 5.**

And though measures in point of fact differ in different places, and Mr. *Dalton*, *c.* 112., thought that in these cases the custom of the place was to be observed, the law only recognises the legal measure. *Hockin* v. *Cooke*, 4 *T. R.* 314.; *The Master, &c. of St. Cross* v. *Lord Howard de Walden*, 6 *T. R.* 338.; and *Rex* v. *Major*, and *Rex* v. *Arnold* (title Corn; Vol. I. p. 755. under which title see also the statutes relating to the buying and selling of corn). **Divers measures.**

So also in the case of *Noble* v. *Durrell*, 3 *T. R.* 271. it was determined that a custom in a particular market town (*Bridgnorth*), that butter should weigh eighteen ounces to the pound, was bad. —But Ld. *Kenyon* C. J. said, that he did not mean, in deciding that question, that a custom to sell butter in *lumps* of any number of ounces was not good. And *Buller* J. said, that this question did not interfere with the question, whether to sell butter in lumps of any particular weight, is good or not? That he had not seen any act which required persons not to sell more or less than a pound; but the question there is, when a person is selling under **A custom in a particular place to sell eighteen ounces to the pound is bad.**

(*a*) All these acts, except the first, are repealed by stat. 5 *G.* 4. *c.* 74. § 23.

the specific denomination of a *pound*, shall he be compellable to sell more than a pound?

5 G. 4. c. 74. By stat. 5 *G.* 4. *c.* 74. intituled, "*An Act for ascertaining and establishing uniformity of weights and measures*;" after reciting that "it is necessary for the security of commerce, and for the good of the community, that weights and measures should be just and uniform: And whereas notwithstanding it is provided by the great charter, that there shall be but one measure and one weight throughout the realm, and by the treaty of union between *England* and *Scotland*, that the same weights and measures should be used throughout *G. B.* as were then established in *England*, yet different weights and measures, some larger, and some less, are still in use in various places throughout the U. K. of *G. B.* and *Ireland*, and the true measure of the present standards is not verily known, which is the cause of great confusion and of manifest frauds: For the remedy and prevention of these evils for the future, and to the end that certain standards of weights and measures should be established throughout the U. K. of *G. B.* and *Ireland*," enacts, "that from and after 1st *May*, 1825 (*a*), the straight line or distance between the centres of the two points in the gold studs in the straight brass rod, now in the custody of the clerk of the house of commons, whereon the words and figures 'standard yard, 1760,' are engraved, shall be and the same is hereby declared to be the original and genuine standard of that measure of length or lineal extension called a yard; and that the same straight line or distance between the centres of the said two points in the said gold studs in the said brass rod, the brass being at the temperature of sixty-two degrees by *Fahrenheit's* thermometer, shall be and is hereby denominated the '*imperial standard yard*,' and shall be and is hereby declared to be the unit or only standard measure of extension, wherefrom or whereby all other measures of extension whatsoever, whether the same be lineal, superficial, or solid, shall be derived, computed, and ascertained; and that all measures of length shall be taken in parts or multiples, or certain proportions of the said standard yard; and that one-third part of the said standard yard shall be a foot, and the twelfth part of such foot shall be an inch; and that the pole or perch in length shall contain five such yards and a half, the furlong 220 such yards, and the mile 1760 such yards."

After 1st May 1825, *standard yard* defined as the measure of length shall be the unit of the measures of extension.

Foot. Inch. Pole or Perch. Furlong. Mile.

§ 2. "All superficial measure shall be computed and ascertained by the said standard yard, or by certain parts, multiples, or proportions thereof; and the rood of land shall contain 1210 square yards according to the said standard yard; and the acre of land shall contain 4840 such square yards, being 160 square perches, poles, or rods."

Superficial measures to be computed from the said yard. Rood. Acre.

By § 3. Reciting that "it is expedient that the said standard yard, if lost, destroyed, defaced, or otherwise injured, should be restored of the same length, by reference to some invariable natural standard: And whereas it has been ascertained by the commissioners appointed by H. M. to inquire into the subject of weights and measures, that the said yard hereby declared to be the imperial standard yard, when compared with a pendulum vibrating seconds of mean time in the latitude of *London*, in a

The yard, if lost, &c. may be restored by reference to the length of a pendulum vibrating seconds at London.

(*a*) N. B. A bill (printed as amended by the Committee, 28th *Feb.* 1825.) is now before parliament to defer the commencement of stat. 5 *G.* 4. *c.* 74. till 1st *Jan.* 1826.

vacuum at the level of the sea, is in the proportion of 36 inches to 39 inches, and one thousand three hundred and ninety-three ten thousandth parts of an inch; it is enacted and declared, "That if at any time hereafter the said imperial standard yard shall be lost, or shall be in any manner destroyed, defaced, or otherwise injured, it shall and may be restored by making, under the direction of the lord high treasurer, or the commissioners of H. M.'s treasury of the U. K. of *G. B.* and *Ireland*, or any three of them, for the time being, a new standard yard, bearing the same proportion to such pendulum as aforesaid, as the said imperial standard yard bears to such pendulum." 5 G. 4. c. 74.

§ 4. Enacts, "That from and after the first day of *May* 1825, the standard brass weight of one pound troy weight, made in the year 1758, now in the custody of the clerk of the house of commons, shall be and the same is hereby declared to be the original and genuine standard measure or weight, and that such brass weight shall be and is hereby denominated the *imperial standard troy pound*, and shall be and the same is hereby declared to be the unit or only standard measure of weight, from which all other weights shall be derived, computed, and ascertained; and that one-twelfth part of the said troy pound shall be an ounce; and that one-twentieth part of such ounce shall be a pennyweight; and that one-twenty-fourth part of such pennyweight shall be a grain; so that 5760 such grains shall be a troy pound, and that 7000 such grains shall be and they are hereby declared to be a pound avoirdupois, and that one-sixteenth part of the said pound avoirdupois shall be an ounce avoirdupois, and that one-sixteenth part of such ounce shall be a dram."

Standard pound defined as the measure of weight.

Ounce. Pennyweight. Grain. 5,760 grains in lb. troy. Pound avoirdupois, 7000 grains troy. Ounce. Dram.

By § 5. reciting that "it is expedient that the said standard troy pound, if lost, destroyed, defaced, or otherwise injured, should be restored of the same weight, by reference to some invariable natural standard: and that it has been ascertained, by the commissioners appointed by H. M. to inquire into the subjects of weights and measures, that a cubic inch of distilled water, weighed in air by brass weights, at the temperature of sixty-two degrees of *Fahrenheit*'s thermometer, the barometer being at thirty inches, is equal to two hundred and fifty-two grains and four hundred and fifty-eight thousandth parts of a grain, of which, as aforesaid, the imperial standard troy pounds contains five thousand seven hundred and sixty;" it is enacted, "that if at any time hereafter the said imperial standard troy pound shall be lost, or shall be in any manner destroyed, defaced, or otherwise injured, it shall and may be restored by making, under the directions of the lord high treasurer, or the commissioners of H. M.'s treasury of the U. K. of *G. B.* and *Ireland*, or any three of them for the time being, a new standard troy pound, bearing the same proportion to the weight of a cubic inch of distilled water, as the said standard pound hereby established bears to such cubic inch of water."

The pound, if lost, &c. may be restored by reference to the weight of a cubic inch of water.

By § 6. "From and after the 1st *May* 1825, the standard measure of capacity, as well for liquids as for dry goods not measured by heaped measure, shall be the gallon, containing ten pounds avoirdupois weight of distilled water weighed in air, at the temperature of sixty-two degrees of *Fahrenheit*'s thermometer, the barometer being at thirty inches; and that a measure shall be forthwith made of brass, of such contents as aforesaid, under the

Standard gallon, containing 10 pounds avoirdupois of water, to be the measure of capacity.

5 G.4. c.74.

Gallon.

directions of the lord high treasurer, or the commissioners of H. M.'s treasury of the U. K., or any three or more of them for the time being; and such brass measure shall be and is hereby declared to be the *imperial standard gallon*, and shall be and is hereby declared to be the unit and only standard measure of capacity, from which all other measures of capacity to be used, as well for wine, beer, ale, spirits, and all sorts of liquids, as for dry goods not measured by heap measure, shall be derived, computed, and ascertained; and that all measures shall be taken in parts or multiples, or certain proportions of the said imperial standard gallon; and that the quart shall be the fourth part of such standard gallon, and the pint shall be one-eighth of such standard gallon, and that two such gallons shall be a peck, and eight such gallons shall be a bushel, and eight such bushels a quarter of corn or other dry goods, not measured by heaped measure.

Quart. Pint. Peck. Bushel. Quarter.

Standard for *heaped measure.*

By § 7. "The standard measure of capacity for coals, culm, lime, fish, potatoes, or fruit, and all other goods and things commonly sold by heaped measure, shall be the aforesaid bushel (*a*), containing eighty pounds avoirdupois of water as aforesaid, the same being made round with a plain and even bottom, and being nineteen inches and a half from outside to outside of such standard measure as aforesaid."

How the bushel shall be heaped.

By § 8. "In making use of such bushel, all coals and other goods and things commonly sold by heaped measure, shall be duly heaped up in such bushel, in the form of a cone, such cone to be of the height of at least six inches, and the outside of the bushel to be the extremity of the base of such cone; and three bushels shall be a sack, and twelve such sacks shall be a chaldron."

Measure of weight, or heaped measure, to be used for coals, culm, lime, fish, potatoes, and fruit. For other articles, weight or stricken measure.

By § 9. "Any contracts, bargains, sales, and dealings, made or had for or with respect to any coals, culm, lime, fish, potatoes, or fruit, and all other goods and things commonly sold by heaped measure, sold, delivered, done or agreed for, or to be sold, delivered, done, or agreed for by weight or measure, shall and may be either according to the said standard of weight, or the said standard for heaped measure; but all contracts, bargains, sales, and dealings, made or had for any other goods, wares, or merchandize, or other thing done or agreed for, or to be sold, delivered, done or agreed for by weight or measure, shall be made and had according to the said standard of weight, or to the said gallon, or the parts, multiples, or proportions thereof; and in using the same the measure shall not be heaped, but shall be stricken with a round stick or roller, straight and of the same diameter from end to end."

Not to authorise selling by measure of articles required to be sold by weight in Ireland.

By § 10. "Nothing herein contained shall authorize the selling in *Ireland*, by measure, of any articles, matters, or things which by any law in force in *Ireland* are required to be sold by weight only."

(*a*) By the bill now before parliament (see p. 592. *n.*) after 1st *Jan.* 1826, all *other* measures used for sale of the above articles, are to be cylindrical, the diameter to be double the depth; the height of the cone or heap to be equal to three-fourths of the depth, the outside of such measure to be the base of such cone.

§ II. Providing Copies of Standards—Keeping them in Counties, Cities, &c.—Ascertaining Measures of Capacity—Equalization of old and new Weights, &c.—Contracts—Corn Rents—Gauging in, and Privileges of London.

By different statutes (14 *Ed.* 3. *st.* 1. *c.* 12.; 31 *Edw.* 3. *st.* 1. *c.* 2.; 12 *H.* 7. *c.* 5. repealed by stat. 5 *G.* 4. *c.* 74. § 23.) directions were given for sending measures according to the standard in the *Exchequer* into the different parts of the kingdom.

By stat. 5 *G.* 4. *c.* 74. § 11. "Copies and models of each of the said standard yard, the said standard pound, the said standard gallon, and the said standard for heaped measure, and of such parts and multiples thereof respectively, as the lord high treasurer of the U. K. of *G. B.* and *Ireland*, or the said commissioners of H. M.'s treasury, or any three of them for the time being, shall judge expedient, shall, within 3 calendar months next after the passing of this act, be carefully made and verified under the direction of the said lord high treasurer, or the said commissioners of H. M.'s treasury, or any three of them for the time being; and the copies and models of the said standard yard of the said standard pound, of the said standard gallon, and of the said standard for heaped measure, and of parts and multiples thereof, so forthwith to be made and verified as aforesaid, shall, within 3 calendar months after the passing of this act (17 *June* 1824), be deposited in the office of the chamberlains of the exchequer at *Westminster*, and copies thereof, verified as aforesaid, shall be sent to the lord mayor of *London* and the chief magistrate of *Edinburgh* and *Dublin*, and of such other cities and places, and to such other places and persons in H. M.'s dominions or elsewhere, as the lord high treasurer or commissioners of the treasury may from time to time direct.

5 G. 4. c. 74. Copies and models of the standard of length, weight, and measure, to be made and verified under direction of the treasury

By § 12. "H. M.'s justices of the peace in every county, riding, or division in *England* or *Ireland*, or shire or stewartry in *Scotland*, and the magistrates in every city, town, or place (being a county within itself) in *England* or *Ireland*, and in every city or royal burgh in *Scotland*, shall, within six calendar months after the passing of this act, (17th *June* 1824), purchase for their respective counties, ridings or divisions, shires or stewartries, cities, towns, or places, or cities or royal burghs, a model and copy of each of the aforesaid standards of length, weight, measure, and of each of the parts and multiples thereof; which models and copies, when so purchased, shall be compared and verified with the models and copies deposited with the chamberlains of the exchequer as aforesaid, in such manner as aforesaid, and upon payment of such fees as are at present payable to the said Chamberlains upon the comparison and verification of weights and measures with the standards thereof; and such models and copies, when so compared and verified, shall be placed for custody and inspection with such person or persons, and in such place or places, as the said justices and magistrates, in their respective counties, ridings and divisions, and shires or stewartries, cities, towns and places, or cities or royal burghs, shall appoint, and the same shall be produced by the keeper or keepers thereof, upon reasonable notice, at such time or times, and place or places, within each such county, riding, or division, shire or stewartry,

Models and copies to be provided for counties, &c.

5 G. 4. c. 74.

city, town, or place, or city or royal burgh, as any person or persons shall by writing under his or their hand or hands require; the person requiring such production paying the reasonable charges of the same."

Expences of procuring the same, &c. how to be paid.

By § 13. "The expence of procuring and transmitting such models and copies for the respective counties, ridings or divisions, cities, towns, or places, shall be paid in that part of the said U. K. of *G. B.* and *Ireland* called *England*, out of the rates payable in such counties, ridings or divisions, cities, towns or places; and in that part of the said U. K. called *Scotland*, such expences in the respective shires and stewartries, and cities or royal burghs, shall be assessed by the commissioners of supply upon such shires and stewartries, and upon cities or royal burghs, by the magistrates thereof, and shall be paid along with the land tax payable in such shires or stewartries, and cities or royal burghs, to the collectors of the land tax in such shires or stewartries, and cities or royal burghs respectively; and in *Ireland* such expences shall be paid in the respective counties and counties of cities and counties of towns, by presentments to be made by grand juries; and the collectors of such county rates in *England*, of land tax in *Scotland*, and of the assessments under grand jury presentments in *Ireland*, shall have such and the same powers of levying and recovering the assessments to be made under this act, as are competent to them for levying and recovering the said county rates, land tax, and grand jury assessments respectively; and the said collectors respectively shall, out of the proceeds of such assessments, pay the expences of procuring and transmitting such models and copies as aforesaid accordingly."

For ascertaining measures of capacity, where reference cannot easily be had to standards.

§ 14. Provides and enacts, "That in all cases of dispute respecting the correctness of any measure of capacity, arising in a place where recourse cannot be conveniently had to any of the aforesaid verified copies or models of the standard measures of capacity, or parts or multiples of the same, it shall and may be lawful to and for any justice of the peace or magistrate having jurisdiction in such place, to ascertain the content of such measure of capacity by direct reference to the weight of pure or rain water which such measure is capable of containing; ten pounds avoirdupois weight of such water, at the temperature of sixty-two degrees by *Fahrenheit*'s thermometer, being the standard gallon ascertained by this act, the same being in bulk equal to two hundred and seventy-seven cubic inches, and two hundred and seventy-four one thousandth parts of a cubic inch, and so in proportion for all parts or multiples of a gallon."

Standard gallon.

After 1st May 1825, *all contracts for sale, &c. by weight or measure* shall relate to the standard, unless the contrary is specified.

By § 15. "From and after the 1st *May* 1825, all contracts, bargains, sales, and dealings which shall be made or had within any part of the U.K. of *G.B.* and *Ireland*, for any work to be done, or for any goods, wares, merchandize, or other things to be sold, delivered, done, or agreed for by weight or measure, *where no special agreement shall be made to the contrary*, shall be deemed, taken, and construed to be made and had according to the standard weights and measures ascertained by this act; *and in all cases where any special agreement shall be made*, with reference to any weight or measure established by local custom, the ratio or proportion which every such local weight or measure shall bear to any of the said standard weights or measures, shall be expressed, declared, and

specified in such agreement, or otherwise such agreement shall be null and void. 5 G.4. c.74.

Existing weights and measures may be used, being marked so as to show the proportion they have to the standard measures and weights.

By § 16. reciting, "whereas it is expedient that persons should be allowed to use the several weights and measures which they may have in their possession, although such weights and measures may not be in conformity with the standard weights and measures established by this act;" it is enacted, "that it shall and may be lawful for any person or persons to buy and sell goods and merchandize by any weights or measures established either by local custom, or founded on special agreement: Provided always, that in order that the ratio or proportion which all such measures and weights shall bear to the standard weights and measures established by this act, shall be and become a matter of common notoriety, the ratio or proportion which all customary measures and weights shall bear to the said standard weights and measures, shall be painted or marked upon all such customary weights and measures respectively; and that nothing herein contained shall extend or be construed to extend to permit any maker of weights or measures, or any person or persons whomsoever, to make any weight or measure at any time after 1st *May* 1825, except in conformity with the standard weights and measures established under the provisions of this act.

For ascertaining rents, &c. payable in grain or malt, &c. in England and Ireland.

"And for the purpose of ascertaining and fixing the payments to be made in consequence of all existing contracts or rents in *England* and *Ireland*, payable in grain or malt, or in any other commodity or thing, and in consequence of any toll or rate heretofore payable according to the weights and measures heretofore in use;" it is enacted by § 17. "that at the general or quarter sessions of the peace to be holden in every county, riding or division, and in every city, town or place, (being a county of itself) in *England* or *Ireland*, next after the expiration of six calendar months after the passing of this act, or at any general quarter sessions of the peace to be holden thereafter, an inquisition shall be taken before the justices assembled at such general or quarter sessions, by the oaths of twelve substantial freeholders of the said respective counties, cities, towns, or places, having lands or tenements to the value of 100*l. per annum* or upwards, to be summoned by the sheriff or proper officer of every such county, city, town or place, to inquire into and ascertain the amount, according to the standard of weight or measure by this act established, of all contracts or rents payable in grain or malt, or any other commodity or thing, or with reference to the measure or weight of any such grain, malt, or other commodity or thing, and the amount of any toll or rate heretofore payable according to any weights and measures heretofore in use within such counties, cities, towns or places respectively; and such inquisitions, when taken, shall be transmitted by the respective clerks of the peace of the same counties respectively, or by the mayor, bailiff, or other head officer of every such city, town or place (being a county of itself,) into H.M.'s courts of exchequer at *Westminster* and *Dublin* respectively, and shall there be enrolled of record, and shall and may be given in evidence, in any action or suit at law or in equity; and the amount so to be ascertained shall be the rule of payment in regard to all such contracts, rents, tolls or rates, in all time coming; and the costs and charges of such inquisitions, and the

5 G. 4. c. 74. enrolments thereof, shall be paid and defrayed in *England* out of the general rate or stock of every such county, riding, division, city, town, or place (being a county of itself,) and in *Ireland* by presentments of the several grand juries.

For ascertaining rents, &c. payable in grain or malt, &c. in Scotland.

"And for the purpose of ascertaining and fixing the payments to be made of all stipends, feu duties, rents, tolls, customs, casualties, and other demands whatsoever, payable in grain, malt, or meal, or any other commodity or thing in that part of the U.K. called *Scotland*, or in any place or district of the same;" it is enacted by § 18., "that the sheriff depute or sheriff substitute in each shire, and the stewart depute or stewart substitute in each stewartry, within *Scotland*, shall, as soon as conveniently may be after the expiration of six calendar months from and after the passing of this act, summon and impannel a jury of the same number, and with the same qualifications, which are required in the jury who strike the fiar prices of grain within the same shire or stewartry, to assemble at such place or places as he shall find convenient; which jury shall inquire into and ascertain the amount, according to the standards by this act established, of all such stipends, feu duties, rents, tolls, customs, casualties, and other demands whatsoever, payable in grain, malt, meal, or any other commodity or thing, according to the weights and measures heretofore in use within the same shires or stewartries; and such inquisitions, when taken, shall be transmitted by the respective sheriff clerks or stewart clerks of such shires or stewartries, into H. M.'s court of exchequer at *Edinburgh*, and shall there be enrolled of record, and shall and may be given in evidence in any action or suit at law or in equity; and the amount so to be ascertained shall, when converted into the standard weights and measures, be the rule of payment in regard to all such stipends, feu duties, rents, tolls, customs, casualties, and other demands whatsoever, in all time coming; and the costs and charges of such inquisitions, and the enrolment thereof, shall be assessed and levied, paid and defrayed, by every such shire or stewartry, in manner as is hereinbefore directed in regard to the assessment for the models of the weights and measures to be purchased for the same shire or stewartry."

Tables of Equalization to be made and contructed.

By § 19. It is enacted, "that as soon as conveniently may be after such inquisitions shall have been made and enrolled in *England*, *Ireland*, and *Scotland* respectively, accurate tables shall be prepared and published under the authority of the said commissioners of H. M.'s treasury, shewing the proportions between the weights and measures heretofore in use, as mentioned in such inquisitions, and the weights and measures hereby established, with such other conversions of weights or measures as the said commissioners of H. M.'s treasury may deem to be necessary; and after the publication of such tables, all future payments to be made shall be regulated according to such tables."

Tables to be constructed for the collection of the customs and excise, &c.

By § 20. Reciting that "the weights and measures by which the rates and duties of the customs and excise, and other H. M.'s revenue, have been heretofore collected, are different from the weights and measures of the same denominations directed by this act to be universally used: and whereas the alteration of such weights and measures may, without due care had therein, greatly affect H. M.'s revenue and tend to the diminishing of the same;

for the prevention thereof," it is enacted, "that so soon as conveniently may be after the passing of this act, (17th *June* 1824,) accurate tables shall be prepared and published under the direction of the said commissioners of the treasury for the time being, in order that the several rates and duties of customs and excise, and other H. M.'s revenue, may be adjusted and made payable according to the respective quantities of the legal standards directed by this act to be universally used; and that from and after the said 1st *May* 1825, and the publication of such tables, the several rates and duties thereafter to be collected by any of the officers of H. M.'s customs or excise, or other H. M.'s revenue, shall be collected and taken according to the calculations in the tables to be prepared as aforesaid." 5 G.4. c.74.

And by stat. 5 *G.*4. *c.* 55. § 9. tables of weights and measures shall be constructed under the directions of the treasury, by which the duties, &c. of customs and excise shall be uniformly collected throughout the U. K. See Vol. II. *Addenda*, tit. Customs, &c.

Tuns, pipes, or other vessels of wine, oil, honey, and other gaugeable liquors imported into London shall be liable to be gauged as heretofore by the Lord Mayor or his deputies; but the contents shall be ascertained by the standard measure directed by this act.

§ 25. From and after the passing of this act (*a*), all tuns, pipes, tertians, hogsheads, or other vessels of wine, oil, honey, and other gaugeable liquors, imported or brought into the port of the city of *London*, and landed within the said city and the liberties thereof, shall be subject and liable to be gauged, as heretofore hath been of right accustomed, by the lord mayor of the said city for the time being, by virtue of his office of gauger, or by his sufficient deputies, lawfully appointed, save and except that the contents of all such tuns, pipes, tertians, hogsheads, and other vessels, shall and may be ascertained by the standard measure of capacity for liquids directed by this act, and the multiples thereof; and all such tuns, pipes, tertians, hogsheads, or other vessels that shall be found wanting of the true contents which such tuns, pipes, tertians, hogsheads, or other vessels ought to be of, to be ascertained as aforesaid, together with the wine and other liquids therein contained, shall be subject and liable to the like seizures and forfeitures as is or are provided by any act or acts of parliament heretofore made for ascertaining the true contents of tuns, pipes, tertians, hogsheads, and other vessels of wine, oil, honey, and other gaugeable liquors; and the moieties of such forfeitures due to H. M., his heirs and successors, shall be, in like manner as heretofore hath been accustomed, accounted for by the lord mayor, for the time being, as such gauger, and his deputies, to H. M., his heirs and successors, in his and their court of exchequer at *Westminster*.

Act not to affect the privileges of the city of London as to the office of gauger of wines, &c.

§ 26. Provided also, that this act or any thing herein contained shall not extend to prohibit, defeat, injure, or lessen the right of the mayor and commonalty and citizens of the city of *London*, or of the lord mayor of the said city for the time being, of, in, to, or concerning the office of gauger of wines, oils, honey, and other gaugeable liquors imported and landed within the city of *London* and the liberties thereof.

The selling by false weights and measures is an offence at the common law, and consequently may be punished by indictment, fine, and imprisonment.

(*a*) *Semble*, here meant 1st *May*, 1825 (See § 1.) and not 17th *June*, 1824, the day on which the act received the royal assent.

§ III. Proper Persons to be appointed to examine Weights, Balances, and Measures. (a)

37 G.3. c.143. So much of stat. 35 G.3. c.102. as requires the justices at quarter sessions to appoint persons to examine weights, &c. repealed, and Justices at their petty sessions may appoint such examiners.

By stat. 37 *G*.3. *c*.143. after repealing (§1.) so much of stat. 35 *G*.3. *c*.102. as requires the justices, *at the quarter sessions of the peace*, to appoint persons to examine the weights and balances within their respective counties, &c. and which authorises the persons so appointed to search for and examine all weights and balances, and to seize and destroy false or unequal weights or balances, and imposes a penalty on the persons in whose possession the same shall be found; it is enacted, "that it shall and may be lawful to and for the justices of the peace, *at their respective petty sessions*, within the divisions, districts, and other places of the several counties in *England* and *Wales*, to appoint one or more person or persons, who shall have power to examine the weights and balances, within such divisions, districts, and other places."

Examiners, when directed by the justices, to visit shops, &c. and seize false weights, &c.

§ 2. It shall and may be lawful to and for the person or persons so to be appointed, and they are hereby required, having first been sworn duly and faithfully to execute the office in him or them reposed by virtue of such appointment, and of this act (which oath such justices are hereby empowered to administer), as often as the said justices shall direct, in the day time, to enter into the shop, mill, house, outhouses, and other premises near to such shop, mill, or house, and into the stall or standing place of any person or persons who sell by retail and weight any wares, provisions, goods, or chattels whatsoever, and then and there to search for, view, and examine all weights and balances in such shop, mill, house, outhouses, premises, stall, or standing place, and to seize any weight or weights, not being according to the standard in the exchequer, or any false or unequal balance or balances, which shall, upon such search, be found therein, and to detain the same, to be produced before the justices in petty sessions as aforesaid, upon the hearing of the information or informations hereinafter mentioned; and the person or persons, in whose shop, mill, house, outhouses, premises, stall, or standing place, any such defective weight or weights, or any such false or unequal balance or balances, shall be found (against whom for such offence or offences an information (A) (B) or informations is and are hereby directed to be preferred) shall, upon conviction (C) thereof in petty sessions as aforesaid, upon view or confession, or upon the oath of one or more credible witness or witnesses, forfeit and pay, for every such offence, any sum of money not exceeding twenty shillings, nor less than five shillings, as the said justices, before whom such person or persons shall have been convicted, shall in their discretion order (D) and adjudge, together with the costs and charges attending such conviction; such forfeiture, together with such costs and charges, to be levied by warrant (E) under the hands and seals of the said justices, by distress and sale of so much of the goods and chattels of the person or persons offending, as shall be sufficient to pay the said penalty, and also the expences of making such distress and sale.

Penalty for having false weights, &c.

A. B.

C.

D.

E.

Justices to cause false weights, &c. to

§ 3. On the conviction of such offender or offenders, the said justices shall cause such defective weight or weights, or such false or unequal balance or balances, so produced before them, to be

(a) See as to the stats. 35 *G*. 3. *c*. 102. 37 *G*. 3. *c*. 143. 55 *G*. 3. *c*. 43. in this section. See stat. 5 *G*. 4. *c*. 74. § 21. p. 606.

forthwith broken and rendered useless, and the materials thereof to be sold, and the money arising from such sale, together with the amount of the forfeiture or forfeitures, to be paid by them to the treasurer of such county, riding, or division, to be by him applied towards the expences of carrying the said recited act and this act into execution, and the residue (if any) on account of the public stock of such county, &c.; and the said justices shall also prepare, or cause to be prepared, returns (F.) of the forfeitures levied by them in pursuance of the said before recited act and of this act, and also of the sums arising from the sale of such defective weights, and false and unequal balances, and shall transmit such returns, signed by them, to the clerk of the peace for such county, riding, or division respectively, at every general quarter sessions of the peace to be held for such county, &c.

37 G. 3. c. 143. — be broken, and the produce of the materials and the forfeitures to be paid to the county treasurer, &c. F.

This statute 37 *G.* 3. *c.* 143. must be construed so as to have been capable of being carried into immediate effect, and at the time it passed, the justices in petty sessions could appoint the officers, (examiners of weights,) only for the divisions and districts then known and recognised; they cannot now subdivide such districts and appoint distinct officers; a rule therefore for a *mandamus*, calling upon the justices of the county to allow a compensation out of the county rate to an examiner of weights and measures so illegally appointed was discharged with costs. *Rex* v. *Justices of Devon*, 1 *B.* & *A.* 588.

By stat. 35 *G.* 3. *c.* 102. § 3. If any person shall wilfully obstruct, hinder, resist, or in anywise oppose any of the persons hereby authorised and empowered to view and examine such weights and balances in the execution of his office, or if any person selling or retailing by weight shall refuse to produce his or her weights and balances in order to be viewed and examined, he or she who shall so offend shall, for every such offence, on being duly convicted on oath before any one or more justices of the peace, forfeit and pay any sum not exceeding forty shillings nor less than five shillings, as the justice or justices before whom any such offender shall be convicted shall adjudge; and such forfeiture or penalty shall be levied and applied as hereinbefore directed.

35 G. 3. c. 102. Obstructing inspectors, refusing to produce weights, &c.

Penalty.

§ 4. It shall and may be lawful to and for the justices at their said quarter sessions to allow to such person or persons, who shall be appointed to examine weights and balances under this act, a reasonable recompence or satisfaction for their trouble in the execution of the said office, such recompence or satisfaction to be paid to such person or persons out of the general county rate.

Recompence to inspectors.

§ 7. It shall and may be lawful to and for the said justices, and they are hereby empowered and required, as soon after the passing of this act as may be convenient, to purchase or cause to be purchased, for the use of their respective counties, ridings, or divisions, out of the general county rate, proper weights, according to the standard in the exchequer, which shall be deposited for the inspection of all persons, either with the respective clerks of the peace or with some proper person, in such safe and convenient place or places within their respective counties, ridings, or divisions, as the said justices shall direct; and shall be produced by the person or persons in whose custody the same shall be lodged (upon reasonable notice) at such time and place as any person or persons shall, by writing under their respective hands, require and appoint; the

Standard weights purchased out of the county rate.

Produced to persons paying costs of production.

35 G. 3. c. 102.

person or persons so requiring the production of the said weights, paying the reasonable costs and charges of producing the same.

37 G. 3. c. 143. If the majority of inhabitants wish that any persons should be specially appointed examiners, they may, in vestry, nominate them for approbation of the justices.

By stat. 37 *G.* 3. *c.* 143. § 4. If the majority of the inhabitants of any parish, township, or place, within such county, riding, or division, should be desirous that any person or persons shall be specially appointed to examine the weights and balances within such parish, township, or place, it shall be lawful for such inhabitants, and they are hereby empowered (at a vestry to be duly holden for that purpose) to nominate one or more substantial householder or householders, to be approved of and appointed by the said justices, at their respective petty sessions for the division or district wherein such parish, township, or place shall lie; which person or persons so nominated, approved, and appointed, shall have the same powers and authorities within such parish, township, or place, as are vested in the person or persons appointed for any district, division, or place.

But no such appointment shall be made till the inhabitants have procured standard weights, the costs of which, and the recompence to the examiners, to be paid out of the poor's rates.

§ 5. No appointment for such parish, township, or place, shall be made until the inhabitants thereof have procured, or caused to be procured, the proper weights, according to the standard in the *Exchequer*, for the use of such parish, township, or place, to be deposited in the custody of the person or persons to be appointed as last mentioned; and it shall be lawful for the said justices, in their respective petty sessions, to order and direct the costs and charges of procuring such weights, and the recompence and satisfaction to be allowed to such person or persons, for his or their time and trouble in the execution of such office, within such parish, township, or place, to be paid out of the rate made for the relief of the poor within such parish, township, or place.

Powers of recited act (except hereby altered) to remain in force.

§ 6. All the clauses, powers, and provisions contained in stat. 35 *G.* 3. *c.* 102. (except such as are hereby repealed or altered) shall continue in force in the same manner as if the same were re-enacted in the body of this act.

35 G. 3. c. 102. Offenders to be punished one way only.

Stat. 35 *G.* 3. *c.* 102. § 5. Provides, that any person or persons convicted of an offence under this act, and who shall suffer for the same, shall not be otherwise punished for such offence by virtue of any other law.

Proviso for authority of persons appointed at court leets, &c.

§ 6. Provided also, that this act shall not extend to lessen the authority which any persons, bodies politic or corporate, or person appointed at any court leet for any hundred or manor, may have for the examining, regulating, seizing, breaking or destroying any weights or balances within their respective jurisdictions, but he and they shall have and possess the same power and authority therein as if this act had not been made.

37 G. 3. c. 143. Conviction. C.

By stat. 37 *G.* 3. *c.* 143. § 8. The conviction may be in the form (C), or to the same effect: *vide post*, p. 607.

Certiorari.

By § 7. No conviction shall be removed by *certiorari*, or any other writ whatsoever.

35 G. 3. c. 102. Information to be within one month.

By stat. 35 *G.* 3. *c.* 102. § 8. No person or persons shall be prosecuted for any offence against this act, unless information thereof upon oath shall have been given to some justice within one month after the offence committed.

55 G. 3. c. 43.

By stat. 55 *G.* 3. *c.* 43. "*For the more effectual prevention of the use of false and deficient measures;*" after reciting, that whereas the laws now in force for the regulation of measures have been found ineffectual for that purpose, and frauds are frequently com-

mitted by persons using false and deficient measures, by which the poor in particular are greatly injured; and that it would tend to prevent such pernicious and fraudulent practices if the justices of the peace throughout *England* and *Wales* were empowered to appoint proper persons to examine the measures within their respective jurisdictions, and to punish such persons as shall be found offending in the premises; it is enacted, that it shall be lawful for the justices of the peace of the several counties, ridings, divisions, cities, boroughs, and towns corporate of *England* and *Wales*, at their respective petty sessions, to appoint one or more person or persons, who shall have power to examine the measures within their several divisions, districts, and limits. 55 G. 3. c. 43.

Justices may appoint proper persons to examine measures within their several divisions.

§ 2. It shall be lawful for the person or persons so to be appointed as aforesaid, and they are hereby required, (having been first sworn duly and faithfully to execute the office in him or them reposed by virtue of such appointment and of this act, which oath such justices are hereby authorised and empowered to administer,) as often as such justices shall direct, in the day-time to enter into the shop, house, outhouses, and other places near to such shop or house, and into the stall or standing place of any person or persons within their respective divisions or limits, who shall sell by retail, and by any measure of capacity, any liquid or dry goods, or other article whatsoever, and then and there to search for, view, and examine all measures of capacity in such shop, house, outhouse, premises, stall, or standing place, and to seize any such measure or measures not being according to the standard in the exchequer, which shall upon such search be found therein, and to detain the same, to be produced before the justices in petty sessions as aforesaid, upon the hearing of the information or informations hereinafter mentioned; and the person or persons in whose shop, house, outhouses, premises, stall or standing place, any such deficient measure or measures shall be found (against whom for such offence or offences an information or informations is and are hereby directed to be preferred) shall, upon conviction thereof in petty sessions as aforesaid, upon view or confession, or upon the oath of one or more credible witness or witnesses, forfeit all such false and deficient measures, which measures so forfeited shall be broken and otherwise disposed of as such justices before whom such conviction shall have taken place shall order and direct; and shall also forfeit and pay for every such false or deficient measure any sum of money not exceeding 20*s.* nor less than 5*s.*, as the said justices, before whom such person or persons shall have been convicted, shall in their discretion order and adjudge, together with the costs and charges attending such conviction; such forfeiture, together with such costs and charges, to be levied by warrant under the hands and seals of the said justices, or the hand and seal of one of them, by distress and sale of so much of the goods and chattels of the person or persons offending as shall be sufficient to pay the said penalty, and the expences of such distress and sale: and in case no such sufficient distress can be found, and such penalties and forfeitures, with the said costs and charges, shall not be forthwith paid, it shall be lawful for such justices, or either of them, and they and he are and is hereby authorised and required by warrant under their or his hands and seals, or hand and seal, to commit

Examiners, duly appointed, may enter shops, &c. in search of false measures, and seize the same.

55 G.3. c.43. such offender or offenders to the gaol or house of correction of the limit where the offence shall be committed, for any time not exceeding one month, unless the penalties, costs and charges in which such offender or offenders shall be convicted, shall be sooner paid.

Penalty on persons obstructing or resisting any examiner of measures, or not producing their measures for examination.

§ 3. If any person shall wilfully obstruct, hinder, resist, or in anywise oppose any of the persons hereby authorised and empowered to view and examine such measures in the execution of his office; or if any person selling or retailing by measure, shall refuse to produce his or her measures in order to be viewed and examined, he or she who shall so offend, shall for every such offence, on being duly convicted on oath before any one or more justice or justices of the peace, forfeit and pay any sum not exceeding *5l.*, nor less than *40s.*, as the justice or justices before whom any such offender shall be convicted, shall adjudge; and such forfeiture or penalty shall be levied and recovered in the manner hereinbefore directed.

Justices to apply forfeitures towards the expenses of this act;

§ 4. On the conviction of any offender or offenders against this act, the justice or justices before whom such conviction shall take place shall cause the amount of the forfeiture or forfeitures which shall be levied or paid by virtue of any such conviction, to be applied towards the expences of carrying this act into execution, and the residue (if any) to be paid to the treasurer of the county, riding, division, city, borough, or town corporate, on account of the public stock thereof; and the said justices shall also prepare, or cause to be prepared, returns (F) of the forfeitures levied by them in pursuance of this act, and shall transmit such returns signed by them to the clerk of the peace, at every general quarter sessions of the peace.

and to make returns of the forfeitures. F.

Examiners to be allowed a reasonable recompence for their trouble.

§ 5. It shall be lawful for the justices, at their general quarter sessions, to allow to such person or persons as shall be appointed to examine measures under this act, a reasonable recompence or satisfaction for their trouble in the execution of the said office; such recompence or satisfaction to be paid to such person or persons out of the general rate or stock of any such county, riding, division, city, borough, or town corporate.

Justices to purchase proper measures for the use of their respective counties, &c. to be deposited with the clerks of the peace.

§ 6. Enacts, that it shall be lawful for the said justices, and they are hereby empowered and required, as soon after the passing of this act as may be convenient, to purchase, or cause to be purchased, for the use of their respective counties or other limits, out of the general rate or stock of such county or other limit, proper measures, duly marked, according to the standard in the exchequer; which shall be deposited either with the respective clerks of the peace, or with some other proper person, in such safe and convenient place or places within their respective limits, as the said justices shall direct; and shall be produced by the person or persons in whose custody the same shall be lodged (upon reasonable notice) at such time and place as any person or persons shall by writing under their respective hands require and appoint; the person or persons so requiring the production of the said measures, paying the reasonable costs and charges of producing the same.

Majority of inhabitants of any parish, &c.

§ 7. If the majority of the inhabitants of any parish, township, or place, should be desirous that any person or persons shall be specially appointed to examine the measures within such parish,

township, or place, it shall and may be lawful for such inhabitants, and they are hereby empowered (at a vestry to be duly holden for that purpose) to nominate five or more substantial householder or householders, to be approved of and appointed by the said justices of their respective petty sessions for the division or district wherein such parish, township, or place shall lie; which person or persons so nominated, approved and appointed, shall have the same powers and authorities, within such parish, township, or place, as are vested in the person or persons appointed for any district, division, or place respectively.

55 G. 3. c. 43.

empowered to nominate five householders as examiners.

§ 8. No appointment for such parish, township, or place, shall be made until the inhabitants thereof shall have procured, or caused to be procured, the proper measures, duly marked according to the standard in the exchequer for the use of such parish, township, or place, to be deposited in the custody of the person or persons to be appointed as last mentioned; and it shall and may be lawful for the said justices in their respective petty sessions to order and direct the costs and charges of procuring such measures, and the recompence and satisfaction to be allowed to such person or persons for his or their time and trouble in the execution of such office, within such parish, township, or place, to be paid out of the rate made for the relief of the poor within such parish, township, or place.

No appointment of such examiners to take place, until proper measures are procured by the inhabitants.

§ 9. No proceedings to be had touching the conviction of any offender against this act shall be removed by writ of *certiorari*, or by any other writ or process whatsoever, into any of H. M.'s courts of record at *Westminster*.

Proceedings touching convictions not to be removed.

§ 10. The justice of the peace, before whom any offender shall be convicted as aforesaid, shall cause the conviction to be made out in the manner and form following, or in any other form of words to the same effect, *mutatis mutandis*, (that is to say),

Conviction.

County of ——— } *BE it remembered, that on the ——— day of ———, in the year of our Lord ——— at a petty session holden at ——— for ——— before us* A. B. *and* C. D. *justices of the peace acting in and for the said ———,* E. F. *of ———, in the said ———, was duly convicted before us the said justices, for that he the said* E. F. *on the ——— day of ——— now last past, at ———, in the said ———, contrary to the form of the statute in that case made and provided* [here state the offence against this act]; *and we, the said justices, do declare and adjudge that the said* E. F. *hath for such offence forfeited the said* [several] *measures* [———] *and hath also forfeited the sum of ——— of lawful money of* Great Britain, *to be applied as the law directs; and the further sum of ——— of like lawful money, for the reasonable costs and charges attending this conviction. Given under our hands and seals, on the day and in the year first-mentioned.*

Form of conviction.

§ 11. Provided, that any person or persons convicted of an offence under this act, and who shall suffer for the same under this act, shall not be otherwise punished for such offence by virtue of any other law or statute of this realm.

Persons convicted not to be otherwise punishable.

§ 12. Provided also, that this act shall not extend to lessen or prevent the authority which any person or persons, bodies politic or corporate, or any person appointed at any court leet for any

Bodies politic, &c. to have the same power of

55 G. 3. c. 43.

examining, &c. measures, as formerly.

hundred or manor, may have or possess for the examining, regulating seizing, breaking or destroying any measures within their respective jurisdictions; but that he, she, and they shall and may have and possess the same power and authority therein as if this act had not been made.

No person to be prosecuted unless on information on oath.

§ 13. No person shall be prosecuted for any offence against this act, unless information thereof upon oath shall have been given to some justice of the peace within six weeks after the offence committed.

A.

(A) Information for selling by Weights, &c. contrary to Stats. 35 *G.* 3. *c.* 102., 37 *G.* 3. *c.* 143., 55 *G.* 3. *c.* 43.

County of ——— to wit. } *THE information and complaint of* A. E. *of the parish of* ———, *in the county of* ———, *being a person duly appointed and sworn to examine the weights and balances within the division of* ———, *in the said county, preferred at a petty sessions held for the said division, at* ———, *in the said county, before us,* J. C. *and* S. P., *esquires, justices of the peace for the said county, acting for the said division, whose names are hereunder written, this* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———; *who on his oath saith, that in pursuance of the directions given him by the justices of the said division, he, on the* ——— *day of* ———, *did enter into the shop,* [*mill, outhouse, &c.* as the case may be,] *of and belonging to* C. D. *at* ———, *in the said county, he the said* C. D. *being a person who sells by retail and weight, goods, wares, and merchandises, to search for, view, and examine his weights and balances there, and the said* C. D. *then and there had in his possession in his said shop* [*mill, &c.*] *viz.* [describe the weights or balances defective] *which were not according to the standard in the exchequer, contrary to the form of the statutes in that case made and provided, whereby he hath incurred the forfeiture imposed by the said act of parliament for the said offence.* A. E.

Exhibited before us the ——— *day of* ———.

J. C.
S. P.

B.

(B) Summons thereon.

County of ——— to wit. } To *C. D.* of the parish of ———, in the county of ———.

WHEREAS A. E. *of* ———, *in the said county, a person duly appointed to examine the weights and balances within the division of* ——— *in the said county of* ———, *hath this day preferred an information against you, for having on the* ——— *day of* ——— *defective weights and a false balance, the same not being according to the standard in the exchequer, found in your shop,* [*mill, outhouse, &c. at* ———, *in the said county,* as the case may be,] *upon search by him made, viz.* [describe the weights or balances defective, as in the information,] *contrary to the form of the statute in that case made and provided; whereby you have incurred the forfeitures mentioned in the said statute.*

These are, therefore, to require you personally to appear before us, or such other of his majesty's justices of the peace for the said county, as shall be present at the petty sessions, to be holden at ———, *in the said county, on* ———, *the* ——— *day of* ———, *at* ——— *o'clock in the forenoon, then and there to answer the premises. Herein fail not. Given under our hands and seals, this* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———.

J. C. (*L. S.*)
S. P. (*L. S.*)

(C) Conviction on Stat. 37 *G.* 3. *c.* 143. C.

County of ——— } *BE it remembered, that on the* ——— *day of* ———, *in the year of our Lord* ———, *at a petty sessions holden for the* [*division* or *district*] *of* ———, *in the said* [*county, riding,* or *division,*] *before* J. P. *and* C. P. *justices of the peace, acting in and for the said* ———, A. O. *of* ———, *in the said* ———, *was duly convicted before us the said justices, for that he the said* A. O. *on the* ——— *day of* ———, *now last past, at* ———, *in the said* ———, *contrary to the form of the statute in that case made and provided* [here state the offence against the act]; *and we the said justices do declare and adjudge, that the said* A. O. *hath forfeited the sum of* ———, *of lawful money of* Great Britain, *for the offence aforesaid, to be applied as the law directs; and also the further sum of* ———, *of like lawful money, for the reasonable costs and charges attending this conviction. Given under our hands and seals on the day and in the year first mentioned.*

(D) Order for payment of Penalty. D.

County of ——— to wit. { To *C. D.* of the parish of ———, in the said county of ———.

WHEREAS you are this day duly convicted before us, J. C. *and* S. P. *esquires, two of his majesty's justices of the peace in and for the said county, for that you, being a person who sell by retail and weight, goods, wares, and merchandises, on the* ——— *day of* ———, *one thousand eight hundred and* ———, *at* ———, *in the said county, contrary to the form of the statutes in that case made and provided, had in your shop,* [*mill, outhouse, &c.* as the case may be,] *defective weights and a false balance, viz.* [as in the conviction], *whereby you have forfeited the sum of* ——— *for the said offence, and also the further sum of* ——— *for the reasonable costs and charges attending the said conviction.*

We do therefore hereby order you the said C. D. *to pay to* A. E. *of* ———, *being a person duly appointed to examine weights and balances within this division of* ———, *the said several sums of* ———, *and* ———, *to be by him paid and applied as the law directs. Given under our hands and seals, this* ——— *day of* ———, *in the year of our Lord* 18—.

J. C. (*L. S.*)
S. P. (*L. S.*)

E. (E) Warrant of Distress on Nonpayment.

County of ——— } To the constable of ———, in the said county, and to all others his majesty's officers of the peace for the said county.

BE it remembered, that on the ——— day of ———, in the year of our Lord one thousand eight hundred and ———, at a petty sessions holden for the division of ———, in the said county, before us J. C. *and* S. P. *esquires, two of his majesty's justices of the peace in and for the said county,* C. D. *of ———, in the said county, being a person who sells by retail and weight goods, wares, and merchandises, was duly convicted before us the said justices, for that he the said* C. D. *on the ——— day of ———, now last past, at ———, in the said division and county, had in his possession in his shop,* [*mill, outhouse, &c.* as the case may be,] *defective weights and a false balance* [describing them as in the conviction], *contrary to the form of the statute in that case made and provided; and we the said justices do declare and adjudge, that he the said* C. D. *hath forfeited the sum of ———, of lawful money of* Great Britain, *for the offence aforesaid, to be applied as the law directs: and also the further sum of ———, of like lawful money, for the reasonable costs and charges attending this conviction; and whereas due demand of the said sum of ——— hath been made of him the said* C. D, *but he hath refused to pay the same.*

These are therefore to require you forthwith to make distress of the goods and chattels of him the said C. D., *and if within the space of ——— days next after such distress by you taken the said sum of ———, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you detain the said sum of ———, and also the reasonable charges of taking, keeping, and selling the said distress, rendering to him the said* C. D. *the overplus on demand; and if no such distress can be made, that then you certify the same unto us, to the end that such further proceedings may be had therein as to the law doth appertain. Given under our hands and seals, this ——— day of ———, in the year of our Lord one thousand eight hundred and ———.*

J. C. (*L. S.*)
S. P. (*L. S.*)

(F) Justices' Return of Penalties, under Stats. 37 *G.* 3. *c.* 143. and 55 *G.* 3. *c.* 43. § 4. p. 604. F.

A Return of Forfeitures levied by the Justices of the Peace in the county of ———, acting within the division of ———, in the said county, in pursuance of the several acts of parliament made for the more effectual prevention of the use of defective weights and false and unequal balances, or false and deficient measures. Between the ——— day of ———, 18—, and the ——— day of ——— following; viz.

Offenders' names.	Residence.	Sums arising from forfeitures.	Ditto, from sale of defective weights and false balances or false and deficient measures.	Date of conviction.	Before whom convicted.

§ IV. Effect of Stat. 5 G. 4. c. 74. as to enforcing or repealing, &c. other Acts relating to Weights and Measures.

By § 21. All the powers, rules, and regulations in force, and contained in the several acts herein-after mentioned, specified, and set forth, for the ascertaining, examining, seizing, breaking, and destroying any weights, balances, or measures, shall be applied and put in execution in *G. B.* for the ascertaining and examining, and for the seizing, breaking, and destroying of any weights or measures not conformable to the standard weights and measures ascertained and authorized by this act, and for the punishment of any person or persons having any defective weight or measure, not conformable to the said standard weights and measures; that is to say, in stat. 29 *G.* 2. *c.* 25. *An act for appointing a sufficient number of constables for the service of the city and liberty of* Westminster, *and to compel proper persons to take upon them the office of jurymen, to prevent nuisances and other offences within the said city and liberty;* and in stat. 31 *G.* 2. *c.* 17. (see § 24.) for explaining, &c. the said recited act; and in stat. 35 *G.* 3. *c.* 102. intituled *An act for the more effectual prevention of the use of defective weights, and of false and unequal balances;* and in stat. 37 *G.* 3. *c.* 143. for explaining and amending the said stat. 35 *G.* 3. and as the said recited act of the said 35th year is amended by the said act of the said 37th year;

Regulations and penalties of certain acts of the parliaments of G. B. and of the U. K.

29 G. 2. c. 25.

31 G. 2. c. 17.

35 G. 3. c. 102.

37 G. 3. c. 143.

5 G. 4. c. 75.

55 G. 3. c. 43. shall be applied within G. B. as if repeated in this act.

and in stat. 55 G. 3. c. 43. intituled *An act for the more effectual prevention of the use of false and deficient measures;* and all the powers, rules, regulations, provisions, penalties, and forfeitures in the said several acts contained, shall be applied and put in execution as if the weights or measures ascertained by this act had been specified in the said recited acts respectively, and as if all such powers, rules, regulations, provisions, penalties, and forfeitures, and modes of recovery thereof, were repeated and re-enacted in this act, except only so far as the said recited acts or any of them, or any part thereof, are expressly repealed or altered by this act, or any other act or acts.

Regulations and penalties of the following acts of the Irish parliament, viz.

By § 22. all the powers, rules, and regulations in force, and contained in the several acts herein-after mentioned, specified, and set forth, passed in the parliament of *Ireland*, shall be applied and put in execution in *Ireland*, for the ascertaining and examining, and for the seizing, breaking, and destroying of any weights or measures not conformable to the standard weights and measures ascertained and authorized by this act, and for the punishment of any person or persons having any defective weight or measure, or any weight or measure not conformable to the said standard weights and measures, and for the carrying into effect the several provisions of the said recited acts with reference to the said standard weights and measures; that is to say, in an act made in 4 *Ann.* for regulating the weights and measures used in *Ireland;* and in an act made in 11 *G.* 2. for the buying and selling all sorts of corn and meal, and other things in the said act mentioned, by weight; and in an act made in 25 *G.* 2. intituled *An act for buying and selling all sorts of corn and meal, and other things therein mentioned, by weight, and for the more effectual preventing the frauds committed in the buying and selling thereof;* and in an act made in 27 *G.* 3. intituled *An act for establishing market juries in cities,* and which said last-mentioned act was by an act made in 28 *G.* 3. extended to all counties of towns and corporate towns in *Ireland;* and all the powers, rules, and regulations, provisions, penalties, and forfeitures in the said several acts contained, shall be applied and put in execution, as if the weights or measures ascertained by this act had been specified in the said recited acts respectively, and as if such powers, rules, regulations, provisions, penalties, and forfeitures, and the modes of recovery thereof, were repeated and re-enacted in this act, except only so far as the said recited acts or any of them, or any part thereof, are expressly repealed or altered by this act, or any other act or acts.

4 Ann. (I.)

11 G. 2. (I.)

25 G. 2. (I.)

27 G. 3. (I.)

28 G. 3. (I.)

shall be applied to this act.

So much of former statutes, ordinances, or acts, as relate to establishing weights or measures, repealed, viz.

By § 23. it is enacted, that the several statutes, ordinances, and acts, and parts of the several statutes, ordinances, and acts herein-after mentioned and specified, so far as the same relate to the ascertaining or establishing any standards of weights and measures, or to the establishing or recognizing certain differences between weights and measures of the same denomination, shall, from and after 1 *May*, 1825, be repealed; that is to say, certain ancient statutes or ordinances made previous to the reign of king *Edward* the third, but being of uncertain date, intituled or known by the names or descriptions following: "*Assisa panis et cervisiæ,*" or "*The assize of bread and ale;*" "*Statutum de pistoribus, et cetera,*" or "*Statute concerning bakers, et cetera;*" "*Assisa de ponderibus et mensuris,*" or "*Tractatus de ponderibus,*" or "*Compositio de*

Statutes of uncertain date.

ponderibus," or "*Assize of weights and measures;*" "*Statutum de admensuratione terræ*," or "*Statute for the measuring of land:*" "*Compositio ulnarum et perticarum;*" and also so much of stat. 14 *Ed.* 3. *c.* 12. as relates to the making of bushels and weights, and sending the same into every county; and also so much of the said last-mentioned statute (*viz. c.* 21.) as directs that the sack of wool ought to contain 26 stones, and every stone 14 pounds; and also so much of stat. 18 *Ed.* 3. *st.* 2. *c.*4. as relates to commissioners to assay weights and measures; and also so much of stat. 25 *Ed.* 3. *st.* 5. *c.* 9, 10. as relates to auncel weight, and the weight of the sack of wool, and as relates to the bushel, half bushel, peck, gallon, pottle, and quart, and to the quarter and measure of corn; and also so much of the statute or ordinance of the staples 27 *Ed.* 3. *st.* 2. *c.* 10., as relates to the uniformity of weights and measures throughout the realm; and also so much of stat. 31 *Ed.* 3. *st.* 1. *c.* 2. *c.* 5., as relates to the regulating the price and weight of wools, and as relates to the tun of wine and the gauging thereof; and also so much of stat. 34 *Ed.* 3. *c.* 5., whereby justices of the peace are empowered to inquire of weights and measures; and also so much of stat. 4 *R.* 2. *c.* 1. as relates to the gauging of vessels of wine, honey, oil, and other liquors brought into the realm; and also so much of stat. 13 *R.* 2. *st.* 1. *c.* 9.. as relates to the regulating of weights and measures, and to the buying and selling of wool at fourteen pounds the stone; and also so much of stat. 15 *R.* 2. *c.* 4., as relates to weights and measures of corn, wine, ale, and malt; and also so much of stat. 16 *R.* 2. *c.* 3., as relates to the clerk of the market, and the assay of weights and measures made by him, and the using such weights and measures; and also so much of stat. 1 *H.* 5. *c.* 10., as concerns the true measure of corn, or as is intituled *An Act concerning the true measure of corn;* and also so much of stat. 2 *H.* 6. *c.* 11., as relates to the several measures of vessels of wine, eels, herrings, and salmon; and also so much of stat. 8 H 6. *c.* 5. as relates to the confirming and amending former statutes concerning weights and measures, and requiring common balances and weights to be kept in all cities, boroughs, and towns; and also so much of stat. 9 *H.* 6. *c.* 6., as relates to the explaining the said stat. 8 *H.* 6. *c.* 6. concerning weights and measures, so far as relates to the burgesses of *Dorchester;* and also so much of the said stat. 9 *H.* 6. *c.* 8. as relates to the weight of a wey of cheese; and also so much of stat. 11 *H.* 6. *c.* 8. as relates to the confirming and amending former statutes concerning weights and measures; and also so much of stat. 18 *H.* 6. *c.* 17., as relates to the gauging vessels of wine, oyl and honey; and also so much of stat. 22 *Ed.* 4. *c.* 2. as relates to the packing of barrelled fish, or as is intituled *An Act for packing of barrelled fish;* and also stat. 1 *R.* 3. *c.* 13., intituled *An act to ascertain the contents of vessels of wine and oil,* or *An act for the contents of a butt of Malmsey;* and also stat. 7 *H.* 7. *c.* 4. intituled, *An act for weights and measures;* and *c.* 8., intituled, *An act to pay custom for every butt of Malmsey;* and also stat. 11 *H.* 7. *c.* 4., intituled, *An act for weights and measures;* and also stat. 12 *H.* 7. *c.* 5., intituled *An act for weights and measures;* and also stat. 23 *H.* 8. *c.* 4., intituled *An act that no brewers of beer or ale shall make their barrels, kilderkins or firkins within them, and how much the same barrels,* et cetera, *shall contain;* and also stat. 24 *H.* 8. *c.* 6., intituled *An act concerning sale of wines;* and also

5 G.4. c.74.
14 E.3. c.12.
14 E.3. c.21.
18 E.3. st.2. c.4.
25 E.3. st.5. c.9, 10.
27 E.3. st.2. c.10.
31 E.3. st.1. c.2. c.5.
34 E.3. c.5.
4 R.2. c.1.
13 R.2. st.1. c.9.
15 R.2. c.4.
16 R.2. c.3.
1 H.5. c.10.
2 H.6. c.11.
8 H.6. c.5.
9 H.6. c.6.
9 H.6. c.8.
11 H.6. c.8.
18 H.6. c.17.
22 E.4. c.2.
1 R.3. c.13.
7 H.7. c.4.
7 H.7. c.8.
11 H.7. c.4.
12 H.7. c.5.
23 H.8. c.4.
24 H.8. c.6.

5 G. 4. c. 74. stat. 12 *El.* (*Ir.*) intituled *An act for the establishing the standard of measures for corn within certain shires of this realm;* and also so much of stat. 13 *El. c.* 11. intituled *An act for the maintenance of the navigation,* as relates to the assize of herring barrels; and also so much of stat. 23 *El. c.* 8. intituled *An act touching the true melting, making, and working of wax,* as relates to the barrel, kilderkin, or firkin of honey; and also the whole of stat. 43 *El. c.* 14. intituled *An act concerning the assize of fuel;* and also an act made in stat. 16 *C.* 1. *c.* 19. intituled *An act for the better ordering and regulating of the office of clerk of the market, allowed and confirmed by this statute; and for the reformation of false weights and measures;* and also so much of stat. 12 *C.* 2. *c.* 23. intituled *A grant of certain impositions upon beer, ale, and other liquors, for the increase of His Majesty's revenue during his life,* as relates to the contents of the barrel of beer and ale; and also stat. 22 *C.* 2. *c.* 8. intituled *An act for ascertaining the measures of corn and salt;* and also stat. 22 & 23 *C.* 2. *c.* 12. intituled *An additional act for ascertaining the measures of corn and salt;* and also so much of stat. 1 *W. & M. st.* 1. *c.* 24. intituled *An act for an additional duty of excise upon beer or ale and other liquors,* as relates to the contents of the barrel of beer and ale; and also so much of stat. 5 & 6 *W. & M. c.* 7. made, among other things, for granting to their majesties certain rates and duties upon salt, and upon beer, ale, and other liquors, as relates to the measure and weight of salt; and also stat. 7 *W.* 3. (*Ir.*) for the better regulating of measures in and throughout the kingdom of *Ireland;* and also so much of stat. 7 & 8 *W.* 3. *c.* 31. made, among other things, for continuing to H.M. certain duties upon salt, glass wares, and earthen wares, as relates to the measure and weight of salt; and also the whole of stat. 9 & 10 *W.* 3. *c.* 6. intituled *An act that all retailers of salt shall sell by weight;* and also so much of stat. 10 & 11 *W.* 3. *c.* 21. made, among other things, for levying further duties upon sweets, and for lessening the duties, as well upon vinegar as upon certain low wines, as relates to the contents of a barrel of vinegar, vinegar beer, or liquor preparing for vinegar; and also so much of stat. 10 & 11 *W.* 3. *c.* 22., intituled *An act for the more full and effectual charging of the duties upon rock salt,* as relates to the weight or measure of rock salt; and also stat. 11 & 12 *W.* 3. *c.* 15., intituled *An act for the ascertaining the measures for retailing ale and beer;* and also stat. 1 *Ann. st.* 1. *c.* 15., intituled *An act to ascertain the water measure of fruit;* and also so much of *c.* 21., intituled *An act for preventing frauds in the duties upon salt, and for the better payment of debentures at the custom house,* as relates to the weight and measure of foreign salt and rock salt; and also stat. 2 *Ann.* (*Ir.*) for supplying the defects of stat. 7 *W.* 3. (*Ir.*); and also so much of stat. 5 & 6 *Ann. c.* 27., intituled *An act for continuing several subsidies, impositions, and duties, and for making provisions therein mentioned, to raise money by way of loan for the service of the war, and other H. M.'s necessary and important occasions; and for ascertaining the wine measure,* as relates to the contents of the gallon, tun, butt, pipe, and hogshead of wine; and also so much of stat. 9 *Ann. c.* 6., made, among other things, for reviving, continuing, and appropriating certain duties upon several commodities to be exported, and certain duties upon coals to be water-borne and carried coastwise, as relates to the chaldron or chalder and bushel of

Margin notes: 12 Eliz. (I.) — 13 Eliz. c. 11. in part. — 23 Eliz. c. 8. in part. — 43 Eliz. c. 14. — 16 C. 1. c. 19. — 12 C. 2. c. 23. in part. — 22 C. 2. c. 8. — 22 & 23 C. 2. c. 12. — 1 W. & M. st. 1. c. 24. in part. — 5 & 6 W. & M. c. 7. in part. — 7 W. 3. (I.) — 7 & 8 W. 3. c. 31. in part. — 9 & 10 W. 3. c. 6. — 10 & 11 W. 3. c. 21. in part. — 10 & 11 W. 3. c. 22. in part. — 11 & 12 W. 3. c. 15. — 1 Ann. st. 1. c. 15. — 1 Ann. st. 1. c. 21. in part. — 2 Ann. (I.) — 5 & 6 Ann. c. 27. in part. — 9 Ann. c. 6. in part.

coals; and also the whole of stat. 9 *Ann. c.*15. for making more effectual stat. 43 *El. c.*14., concerning the assize of fuel; and also stat. 10 *Ann. c.*6., intituled *An act for explaining and altering the laws now in being concerning the assizes of fuel, so far as they relate to the assize of billet made or to be made of beech wood only;* and also so much of stat. 1 *G.* 2. (*Ir.*), intituled *An act for preventing combinations to enhance the prices, and for avoiding exactions and abuses formerly practised in the sale and measure of coals,* as relates to the dimensions of the half barrel, bushel, half bushel, peck or half peck of coals; and also so much of stat. 8 *G.* 2. *c.* 12., made, among other things, for granting and continuing the duties upon salt and upon red and white herrings, as relates to the computation of the distance in miles between the pits and refineries of rock salt; and also stat. 9 *G.* 2. (*Ir.*), intituled *An act for the ascertaining the gauge and the measure of barrels and half barrels, used by brewers in selling beer, ale, and small beer;* and also so much of stat. 24 *G.* 2. *c.* 31., intituled *An act for explaining, amending and enforcing an act passed in the thirteenth year of his late majesty's reign,* intituled '*An act for the better regulation of the linen and hempen manufactures in that part of* G. B. *called* Scotland, *and for further regulating and encouraging the said manufactures,*' *viz.* 13 *G.* 1. *c.* 26. as relates to the weight of hemp or flax; and also stat. 26 *G.* 3. (*Ir.*), for preventing frauds in the measurement of lime; and also so much of stat. 38 *G.* 3. *c.* 89. intituled *An act for transferring the management of the salt duties to the commissioners of excise, and for repealing the duties on salt, and the drawbacks, allowances, and bounties thereon,* as relates to the weight of a bushel of salt; and also so much of stat. 43 *G.* 3. *c.* 69., intituled *An act to repeal the duties of excise payable in* G. B., *and to grant other duties in lieu thereof,* as relates to the quart, gallon, and barrel of beer or ale; and all the said recited statutes or ordinances and acts, and parts of statutes and acts, so far as the same, or any of them, relate to the ascertaining or establishing any standards of weights and measures, or to the establishing or recognizing certain differences between weights and measures of the same denomination, but no farther or otherwise, shall, from and after the said 1st *May*, 1825, be and are hereby repealed; save and except only so far as any such statutes or acts, or any part thereof, repeal any other statutes or acts, or any part thereof, which relate to the ascertaining or establishing any standard of weights and measures, or to the establishing or recognizing certain differences between weights and measures of the same denomination; all which statutes and acts, or any parts thereof so repealed, shall be and remain repealed to all intents and purposes whatever.

[Margin: 5 G.4. c.74. — 9 Ann. c.15. 10 Ann. c.6. — 1 G.2. (I.) in part. — 8 G.2. c.12. in part. — 9 G.2. (I.) — 24 G.2. c.31. in part. — 26 G.3. (I.) — 38 G.3. c.89. — 43 G.3. c.69.]

§ 24. Enacts, that nothing in this act contained shall repeal stat. 31 *G.* 2. *c.* 17. (see § 21.) hereinbefore recited, nor in any manner to affect or alter the power given by the said recited act to the dean, high steward, or his deputy, and the burgesses of the city of *Westminster*, to appoint a proper officer to size and seal all weights and measures used by persons dealing by weight and measure in the said city of *Westminster* and the liberties thereof, but that all the powers given and reserved to the said dean, high steward, or his deputy, and burgesses, by the said recited act, shall and may be exercised in the appointing of a proper officer to

[Margin: Act not to extend to repeal 31 G.2. c.17. which empowers the dean and high steward of Westminster, &c. to appoint a proper officer to size and seal weights and measures.]

5 G.4. c.74. size and seal all such weights and measures as shall, from the passing of this act (*a*), be lawful and be used by persons dealing by weight and measure within the said city and liberties of *Westminster*, and shall and may be used and exercised by any officer so appointed, in the same manner in all respects as is directed by the said recited act with relation to the weights and measures in the said recited act mentioned.

Wife.

[13 Ed. 1. st. 1. c. 34.]

Woman marrying pending an action.

IN the case of *King and ux.* v. *Jones*, 2 *Ld. Raym.* 1525. 2 *Str.* 811. it was decided that if an action be brought against a *feme sole*, though she marries before she appears or pleads, she may appear and plead by attorney without her husband.

Committing offences with her husband.

A wife or feme covert is so much favoured in respect of that power and authority which her husband has over her that she shall not suffer any punishment for committing a bare theft in company with or by coercion of her husband. 1 *Haw. c.* 1. § 2. 1 *Russ.* 23.

But if she commit a theft of her own voluntary act, or by the bare command of her husband, or be guilty of treason, murder, or robbery, in company with or by coercion of her husband, she is punishable as much as if she were sole, because of the odiousness and dangerous consequences of these crimes. 1 *Haw. c.* 1. § 9. 1 *Hale*, 47. *Dalt. c.* 157.

And the coercion of the husband is only a presumption till the contrary appear; for if upon the evidence it can clearly appear that the wife was not drawn to it by the husband, but that she was the principal actor and inciter of it, she seems to be guilty as well as the husband. 1 *Hale*, 516.

Wife not answerable for her husband's breach of duty.

Where the wife is to be considered merely as the servant of the husband, she will not be answerable for the consequences of his breach of duty, however fatal, though she may be privy to his conduct. *Charles Squire and Hannah his wife* were indicted for the murder of a boy, who was bound as a parish apprentice to the prisoner *Charles*; and it appeared in evidence that both the prisoners had used the apprentice in a most cruel and barbarous manner, and that the wife had occasionally committed the cruelties in the absence of the husband. But the surgeon who opened the body deposed, that in his judgment the boy died from debility and want of proper food and nourishment, and not from the wounds, &c. which he had received. Upon which *Lawrence* J. directed the jury, that as the wife was the servant of the husband it was not her duty to provide the apprentice with sufficient food and nourishment, and that she was not guilty of any breach of duty in neglecting to do so; though, if the husband had allowed her sufficient food for the apprentice, and she had wilfully withholden it from him, then she would have been guilty. But, that here the

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(*a*) *Semble*, here meant 1st *May*, 1825; see § 1. and not 17th *June*, 1824, the day on which the act received the royal assent: see now 592. *n*.

fact was otherwise; and therefore, though in *foro conscientiæ* the wife was equally guilty with her husband, yet in point of law she could not be said to be guilty of not providing the apprentice with sufficient food and nourishment. *R.* v. *Squire and wife, Stafford Lent Assizes*, 1799. *M.S.* 1 *Russ.* 24. *S.C.* See also title Homicide, Vol. II. p. 1037.

Not an accessary in receiving her husband, being guilty of felony.

A wife shall not be deemed accessary to a felony for receiving her husband who has been guilty of it, as her husband shall be for receiving her; because she is under the power of her husband, and she is bound to receive him. 1 *Haw. c.* 1. § 10. 1 *Hale*, 47.

Keeping a bawdy-house.

But a wife may be indicted together with her husband and punished with him for keeping a bawdy house; for this is an offence as to the government of the house, in which the wife has a principal share; and also such an offence as may generally be presumed to be managed by the intrigues of her sex. 1 *Haw. c.* 1. § 12. 1 *Russ.* 25.

Wife to suffer corporally; but the husband to pay the forfeiture.

And generally a married woman shall answer as much as if she were sole for an offence, not capital, against the common law or statute; and if it be of such a nature that it may be committed by her alone, without the concurrence of her husband, she may be punished for it without the husband by way of indictment; which being a proceeding grounded merely on the breach of the law, the husband shall not be included in it for an offence to which he is no way privy. But if a wife incur the forfeiture of a penal statute, the husband may be made a party to an action or information for the same (as he may generally to any suit for a cause of action given by his wife), and shall be liable to answer what shall be recovered thereupon. 1 *Haw. c.* 1. § 13.

Where a wife, by the incitement of her husband, but in his absence, knowingly uttered a forged order and certificate for the receiving of prize money, it was holden by the court of K.B. that they might be indicted together; the wife as principal on the stat. 49 *G.* 3. *c.* 123.; and the husband as an accessary before the fact at common law. *Morris's case*, 2 *Leach*, 1096. 2 *Russ.* 1476.

Objection overruled as to the coercion of a husband in a case of forgery.

In *Martha Hughes's case, Lanc. Spring Assizes*, 1813. 2 *Russ.* 1478, the question of the coercion of a husband upon a wife, in the offence of forgery, came under the consideration of a very learned judge. The prisoner, *Martha Hughes*, the wife of *Patrick Hughes*, was indicted for forging and uttering three two pound bank of *England* notes. The principal witness stated, that in consequence of a conversation which he had had some time before with the prisoner's husband, he went to the husband's shop; that the husband was not present, but that he saw the prisoner, who beckoned him to go into an inner room; that she followed him into the room, and that he there told her what her husband had said to him; upon which they agreed about the business, and he bought of her three two pounds, at one pound four shillings each:—that he paid her for the notes, and was to receive eight shillings in change. He further stated, that when he was putting the notes into his pocket-book, and before he had received the change, the husband put his head into the room and looked in; but did not come in, or interfere in the business, further than by saying, "Get on with you." After this the witness and prisoner returned into the shop, where the husband was; the prisoner gave him the change, and

Martha Hughes's case.

both the prisoner and her husband cautioned him to be careful. On these circumstances being proved, the counsel for the prisoner objected, that it clearly appeared that she acted under the coercion of her husband; that in case both the husband and wife had been on their trial, this evidence would have been sufficient to have convicted him; and, therefore, he contended that the wife ought to be acquitted. And he referred to 2 *East's P. C.* 559. 1 *Hale*, 46. *Kel.* 37. — But *Thomson* B. stopped the counsel for the prosecution, saying, " I am very clear as to the law on this point. The law, out of tenderness to the wife, if a felony be committed in the presence of the husband, raises a presumption *primâ facie*, and *primâ facie* only, as is clearly laid down by Lord *Hale*, (1 *Hale*, 516.) that it was done under his coercion: but it is absolutely necessary that the husband should in such case be actually present and taking a part in the transaction. Here it is entirely the act of the wife; it is indeed in consequence of a communication previously with the husband that the witness applies to the wife; but she is ready to deal, and has on her person the articles which she delivers to the witness. There was a putting off before the husband came; and it was sufficient, if before that time she did that which was necessary to complete the crime. The coercion must be at the time of the act done, and then the law out of tenderness refers it *primâ facie* to the coercion of the husband. But when the crime has been completed in his absence, no subsequent act of his (although it might possibly make him an accessary to the felony of the wife) can be referred to what was done in his absence.

Carrying her away with the husband's goods.

Of women carried away (*viz.* violently, or against their wills, 2 *Inst.* 435.) with the goods of their husbands, the king shall have the suit for the goods so taken away. 13 *Ed.* 1. *st.* 1. *c.* 34. That is, it shall be felony. And so, if any man take another man's wife, with her husband's goods, against the husband's will, this is also felony. *Dalt. c.* 157.

Wife taking the husband's goods.

But a wife herself cannot feloniously take her husband's goods; and though she take her husband's goods, and deliver them to a stranger, yet it is no felony in the stranger. *Hale's Sum.* 65. 1 *Haw. c.* 33. § 19. 1 *Russ.* 26.

But she may be guilty of felony in taking her husband's goods from the possession of another party.

And if the wife steal the goods of her husband and deliver them to *B.*, who knowing it carries them away, *B. being the adulterer of the wife*, this would be felony in *B.*, for in such case no consent of the husband can be presumed. *Dalt. c.* 157. *p.* 353. 1 *Russ.* 27.

Guilty of forcible entry.

A married woman by her own act (but not in respect of what is done by others at her command, because all such commands of hers are void) may commit a forcible entry or detainer; and upon the justice's view of the force, she shall be imprisoned therefore, and she may be fined in such case: but such fine set upon the wife shall not be levied upon the husband; for the husband shall never be charged for the act or default of his wife but when he is made a party to the action, and judgment given against him and his wife. *Dalt. c.* 126. 9 *Rep.* 72. 11 *Rep.* 61.

Guilty of slander, trespass, or assault.

Likewise if she shall commit any riot, or do any trespass or other wrong, she is punishable for it; and for a trespass done by the wife, or for a scandal published by her, the action lieth against

both the husband and wife, and there the husband is chargeable to the damages or fine, because he is party to the action and judgment. But if a wife, without her husband, be indicted of a trespass, riot, or any other wrong, there the wife shall answer and be party to the judgment only; and in such case, the fine set upon the wife shall not be levied upon the husband; yet after the husband's death such damages or fines shall then be levied of the wife herself; and as for imprisonment or other corporal pain, it shall be inflicted upon the wife only, and not upon the husband for his wife's act or default. *Dalt. c.* 139. *p.* 314.

Pitt v. *Meller and ux.*, 2 *Str.* 1167. In trover against both, and judgment and execution against both, the wife petitioned to be discharged out of custody; which the court refused, unless it could be shewn that there was fraud and collusion between the plaintiff and the husband to keep her there.

Finch and ux. v. *Duddin and ux.*, 2 *Str.* 1237. In an action for a battery of the plaintiff's wife by the defendant's wife, there was judgment for the plaintiffs, and the wife of the defendant was alone taken in execution. She moved to be discharged, but upon affidavits of endeavours to take the husband, and it not appearing there was any design to screen him, the court refused it, on the authority of *Pitt* v. *Meller, supra.*

Langstaff v. *Rain and ux.*, 1 *Wils.* 149. On an action of assault and battery done by the defendant's wife, there was a verdict and judgment for the plaintiff, and both the husband and wife were taken in execution. It was moved to discharge the wife out of custody. But by the court, this matter has been determined in the case of *Finch* v. *Duddin*, that the wife is liable to be taken. And the court refused to discharge her.

Receiving stolen goods.

If a woman receive stolen goods into her house, knowing them so to be; or lock them up in her chest or chamber, her husband not knowing thereof; if her husband, so soon as he knoweth thereof, do forthwith forsake his house, and her company, and make his abode elsewhere, he shall not be charged for her offence; whereas otherwise the law will impute the fault to him, and not to her. *Dalt. c.* 157. *p.* 353.

Guilty of conspiracy with her husband.

A prosecution for conspiracy is not maintainable against a husband and wife only; because they are esteemed but as one person in law, and are presumed to have but one will. 1 *Haw. c.*72. § 8.

Woman servant marrying.

If a woman who is a servant shall marry, yet she must serve out her time, and the husband cannot take her out of her master's service. *Dalt. c.* 58. *p.* 139.

Wife hiring to be a servant.

Also if a married man and his wife do bind themselves to serve, they shall be compelled to serve according to their covenant or agreement. *Dalt. c.* 58. *p.* 139.

Killing her husband, petty treason.

If the wife maliciously kill her husband, it is petty treason; but if the husband maliciously kill his wife, it is but murder. *Dalt. c.* 142. *p.* 324.

Evidence for or against her husband.

Husband and wife cannot be witnesses for one another; nor regularly against one another. 2 *Haw. c.* 46. § 16. *Vide* Vol. I. title "Evidence," p. 970.

May demand surety for the peace against her husband.

But a wife may demand surety of the peace against her husband, threatening to beat her outrageously; and a husband also may have it against his wife. 1 *Haw. c.* 60. § 4. Vide *R.* v. *Doherty*, *ante*, *p.* 301.

And in other criminal cases, the wife may be a witness against her husband, where she is the party grieved; but not in civil cases. *Dalt. c.* 164. *p.* 378.

R. v. *Earl Ferrers*, 1 *Burr.* 631. An *habeas corpus* was issued, commanding *Lawrence* earl *Ferrers* to bring up the body of his countess, that she might receive the protection of the court against the said earl, and swear the peace against him if she should think proper. The earl disobeying the writ of *habeas corpus*, an attachment was granted against him. Upon which he permitted her to come into court, and she exhibited articles of the peace against him. And the earl was obliged to enter into recognisance accordingly, himself in 5000*l.* and two sureties in 2500*l.* each.

And a recognisance to the same effect has been entered into by a peer of the realm, within a recent date.

Husband and wife agreeing to live separate.

R. v. *Mary Mead*, 1 *Burr.* 342. An *habeas corpus* having issued at the instance of *John Wilkes*, esquire, to bring up the body of *Mary Wilkes*, wife of the said *John Wilkes*, and daughter of the said *Mary Mead;* Mrs. *Mead* now brought her into court. The substance of the return was, that her husband (having used her very ill) did, in consideration of a great sum which she gave him out of her separate estate, consent to her living alone, executed articles of separation, and covenanted (under a large penalty) never to disturb her or any person with whom she should live; that she lived with her mother at her own earnest desire; and that the writ of *habeas corpus* was taken out with a view of seizing her by force, or some other bad purpose. The court held this to be a formal renunciation by the husband of his marital right to seize her or force her back to live with him. And they said that any attempt of the husband to seize her by force and violence would be a breach of the peace. They also declared, that any attempt made by the husband to molest her in her present return from *Westminster-hall* would be a contempt of the court; and they told the lady she was at full liberty to go where and to whom she pleased.

Selling wives.

It is extraordinary (says Mr. *Christian*) that prosecutions are not instituted against those who publicly sell their wives, and against those who buy them. Such a practice is shameful and scandalous in itself, and encourages other acts of criminality and wickedness. All such acts of indecency and immorality are public misdemeanors, and the offenders may be punished either by an information granted by the court of K. B. or by an indictment preferred before a grand jury at the assizes or quarter sessions. See 4 *Bla. Com.* 15th *ed.* 64. *n.* 12.

Cannot be bound by recognisance.

A wife cannot be bound herself by recognisance, but her sureties only. *Dalt. c.* 117.

May make a surrender.

She may surrender a lease in the court of chancery or exchequer in order to renew the same. 29 *G.* 2. *c.* 31.

Husband not liable to the wife's debts after her death.

H. 1735. In chancery. *Heard* v. *Stamford*, *Cas. Temp. Talb.* 173. 3 *P. Wms.* 409. The husband, as such, is not chargeable in a court of equity, any more than at law, with the debts of his wife after her decease; no, not even though he had a large fortune with her; as on the other hand he is, during the coverture, liable to all her debts, although he got nothing with her.

Where a husband, not separated from his wife, makes an allowance to her for the supply of herself and family with necessaries

during his temporary absence, and a tradesman with notice of this, supplies her with goods, the husband is not liable for the debt. *Holt* v *Brien*, 4 *B.* & *A.* 252.

Windows, Duty on. See **Taxes**, (*Assessed*).
Wine. See **Excise**, Vol. II.

Witchcraft.

[9 G. 2. c. 5.]

BY stat. 9 *G.* 2. *c.* 5. § 3. No prosecution, suit, or proceeding, shall be commenced or carried on against any person for witchcraft, sorcery, enchantment, or conjuration, or for charging another with any such offence, in any court whatsoever. **Prosecution for witchcraft abolished.**

But by § 4. If any person shall pretend to exercise or use any kind of witchcraft, sorcery, enchantment, or conjuration; or undertake to tell fortunes; or pretend from his skill or knowledge in any occult or crafty science, to discover where or in what manner any goods or chattels, supposed to have been stolen or lost, may be found; every person so offending, being convicted on indictment or information, shall suffer imprisonment for a year, without bail or mainprise, and once in every quarter of the said year in some market town of the proper county, upon the market day there, stand openly on the pillory (*a*) for one hour, and also shall (if the court by which such judgment shall be given shall think fit) be obliged to give sureties for his good behaviour in such sum, and for such time, as the said court shall judge proper, according to the circumstances of the offence, and in such case shall be further imprisoned until such sureties shall be given. **Pretending to witchcraft.**

Witness. See **Evidence**, Vol. I.
Witnesses, summoning. See **Summons**, *ante*.

Witnesses.

BY stat. 27 *G.* 3. *c.* 29. Where pecuniary penalties or parts thereof are given to the poor, the inhabitant of any place may be a competent witness to prove an offence, though the place may be benefited by the conviction of the offender, unless the penalty exceed 20*l.* See **Evidence**, Vol. I. p. 981. **27 G. 3. c. 29.**

(*a*) *Sed vide* stat. 56 *G.* 3. *c.* 138. Vol. III. *tit.* **Pillory.**

Women.

[3 Ed. 1. c. 13.—20 H. 6. c. 9.—31 H. 6. c. 9.—3 H. 7. c. 2.—4 & 5 P. & M. c. 8.—18 El. c. 7.—3 W. 3. c. 9.—4 & 5 W. 3. c. 24.—30 G. 3. c. 48.—57 G. 3. c. 71.—1 G. 4. c. 57. c. 115.—4 G. 4. c. 76.]

Concerning women considered as *wives*, or *femes covert*; see title Wife.

Concerning women having two husbands, or men two wives; see title Polygamy, Vol. III.

Concerning the ravishment of women; see title Rape, *ante*.

Carnally knowing a female child under ten.

BY stat. 18 *El. c.* 7. If any person shall unlawfully and carnally know and abuse any woman-child under the age of ten years, he shall be guilty of felony without benefit of clergy. And in this case the consent of the child is immaterial.

Taking a woman by force.

By stat. 3 *Ed.* 1. *c.* 13. None shall take by force any maiden within age (that is, the age of twelve years, being the age of consent to marriage, 2 *Inst.* 182.) by her own consent nor without; nor any wife or maiden of full age, nor any other woman against her will; on pain of imprisonment for two years, and after, fine at the king's will.

31 H. 6. c. 9. Forcing her to become bound.

By stat. 31 *H.* 6. *c.* 9. If any person take by force, or otherwise, any woman sole, having any substance of lands, tenements, or moveable goods, and enforce her before she be set at liberty to bind herself to him by statute or obligation; such bond shall be void.

3 H. 7. c. 2. Forcible abduction of women, &c.

Stat. 3 *H.* 7. *c.* 2. Reciting that "where women, as well maidens as widows and wives, having substances, some in goods moveable, and some in lands and tenements, and some being heirs apparent unto their ancestors, for the lucre of such substances be oftentimes taken by misdoers, contrary to their will, and after married to such misdoers, or to others by their assent, or defiled," enacts, "that whatever person or persons from henceforth taketh any woman, so against her will, unlawfully, that is to say, maid, widow, or wife; such taking, procuring, and abetting to the same, and also receiving wittingly the same woman so taken against her will, and knowing the same, be felony; and that such misdoers, takers, and procurators to the same, and receivers, knowing the said offence in form aforesaid, be adjudged principal felons: provided that this act extend not to any person taking any woman, only claiming her as his ward or bond-woman." And by

39 El. c. 9.

stat. 39 *El. c.* 9. benefit of clergy is taken away from the principals, procurers, and accessaries before.

1 G. 4. c. 115. repealing so much of 39 El. c. 9. as inflicts the punishment of death, for forcible abduction of women.

Stat. 1 *G.* 4. *c.* 115. § 1. After reciting that whereas by stat. 39 *El. c.* 9. *supra*, intituled "*An act for taking away of clergy from offenders against a certain statute made in the third year of the reign of king* Henry *the seventh, concerning the taking away of women against their wills unlawfully*," it is amongst other things enacted, that all and every such person and persons

as at any time after the end of this present session of parliament shall be convicted or attainted of or for any offence, to be committed after the end of this present session of parliament, made felony by the said act of the third year of the reign of king *Henry* the seventh, or which shall be indicted or arraigned of or for any such offence, and stand mute or make no direct answer, or shall challenge peremptorily above the number of twenty, shall in every such case lose his and their benefit of clergy, and shall suffer pains of death without any benefit of clergy: — enacts, that so much of the said act as inflicts punishment of death on the offences hereinbefore recited, shall, from and after the passing of this act, be and the same is hereby repealed.

1 G. 4. c. 115.

§ 2. Enacts, that all persons duly convicted of the offence hereinbefore recited, which was punishable with death under the above recited act, shall be liable to be transported beyond the seas for life, or for such term, not less than seven years, as the court before which such person shall be convicted shall adjudge; or shall be liable, in case the said court shall think fit, to be imprisoned only, or imprisoned and kept to hard labour in the common gaol, penitentiary house, or house of correction, for any term not exceeding seven years.

Instead of the punishment of death, offenders shall be liable to transportation, &c.

Upon the face of which said statute of the 3 *H.* 7. these things are required to make the offence felony: 1. That the maid, wife, or widow, have lands, or tenements, or moveable goods, or be an heir apparent. 2. That she be taken away against her will. 3. That the taking was for lucre. And 4. That she be married to the misdoer, or to some other by his consent; or be defiled (that is, carnally known). For if these concur not, and be so laid in the indictment, the misdoer is not a felon within the statute, but otherwise to be punished. 3 *Inst.* 61. 1 *Haw. c.* 42. § 4.

The said act makes not only the takers, but the procurers and abettors of the felony, and receivers of the woman (*a*) wittingly, knowing the same, to be all principal felons; the like whereof Lord *Coke* says he hath not found in any other statute that he remembers. But by the construction of the common law, they that receive the misdoers, and not the woman, are accessaries only. 3 *Inst.* 61, 62.

But those who are only privy to the marriage, but no way parties to the forcible taking away, or consenting thereto, are not within the statute. 1 *Haw. c.* 42. § 9. and *Cro. Car.* 489. 493.

It is no manner of excuse, that the woman at first was taken away with her own consent; because if she afterwards refuse to continue with the offender, and be forced against her will, she may from that time as properly be said to be taken against her will, as if she had never given any consent at all; for till the force was put upon her, she was in her own power. 1 *Haw. c.* 42. § 6.

Also, it is not material whether a woman so taken contrary to her will be at last married or defiled with her own consent, or not; if she were under the force at the time, 1 *Haw. c.* 42. § 7.

In *Fulwood's case, M.* 13 *C.* 1., 1 *Hale,* 661., *Cro. Car.* 488., it was resolved that the woman taken away and married may be

(*a*) This point, respecting the receivers of the woman, seems questionable. *Vide* 1 *East's P. C.* 453.

sworn and give evidence against the offender, who so took and married her, though she be his wife *de facto*.

Trial and county.

If a woman be forcibly taken in one county, and afterwards go voluntarily into another county, and be there married or defiled with her own consent, the fact is not indictable in either: for the offence, which consists in the forcible taking and subsequent marriage or defilement, is not complete in either. But if the force continued upon her at all in the other county into which she was so taken, the offender may be indicted there; although the actual marriage or defilement afterwards took place with her own consent. See the case of *Lockhart Gordon* and *Loudon Gordon*. *Cor. Lawrence* J. *Oxford Lent Ass.* 1804. 1 *Russ.* 820, 821. 1 *East's P. C.* 453.

4 & 5 P. & M. c. 8. Taking a woman under sixteen.

By 4 & 5 *P.* & *M. c.* 8. § 3. If any person above the age of fourteen years shall unlawfully take or convey, or cause to be taken or conveyed, any maid or woman-child unmarried, being within the age of sixteen years, out of the possession and against the will of her father, or mother, or guardian; he shall suffer two years' imprisonment, or pay such fine as shall be assessed by the court, half to the king and half to the parties grieved.

Whether the child be legitimate or not, makes no difference on this section of the act.

Natural daughter.

R. v. *Cornforth and others*, 2 *Str.* 1162. The court granted an information against the defendants, for taking away a *natural* daughter under sixteen, under the care of her putative father; being of opinion that it was within this statute.

4 & 5 P. & M. c. 8.

§ 3. If any person shall so take away, or cause to be taken away, *and deflour*, any such maid or woman-child; or shall against the will or knowledge of the father, or, if he be dead, of the mother, having tuition of such child, *contract matrimony* with her by letters, messages, or otherwise; he shall be imprisoned for five years, or pay such fine as shall be assessed by the court, half to the king, and half to the parties grieved.

§ 6. And if any woman-child or maiden, being above the age of twelve years, and under sixteen, shall consent or agree to such person so making such contract of matrimony, the next of kin to her shall have, hold, and enjoy her lands, during the life of the person so contracting.

4 G. 4. c. 76. Marriage act.

By stat. 4 *G.* 4. *c.* 76. § 27. No suit shall be had in any ecclesiastical court, in order to compel a celebration of marriage *in facie ecclesiæ*, by reason of any contract of matrimony whatsoever, whether *per verba de præsenti*, or *per verba de futuro*.

20 H. 6. c. 9. Peeresses, how to be tried.

By stat. 20 *H.* 6. *c.* 9. Peeresses shall be tried as peers for treason or felony.

3 W. 3. c. 9. Benefit of clergy.

By stat. 3 *W.* 3. *c.* 9. A woman being convicted of an offence, for which a man may have his clergy, shall suffer the same punishment as a man should suffer, that has the benefit of his clergy allowed; that is, shall be burned in the hand, and further kept in prison as the court shall think fit, not exceeding one year.

But by 4 & 5 *W.* 3. *c.* 24. § 13. she shall have the benefit of the said statute but once.

Judgment in treason and felony.

The judgment against a woman, in case of high treason, was not the same as against a man traitor, to be hanged, cut down

alive, have the bowels taken out and the body quartered, but it was to be drawn to the place of execution, and there burned.

And this also was the judgment against a woman in case of petit treason; whereas the judgment against a man, for petit treason, is that he shall be hanged.

But now the punishment of burning women is abolished, by stat. 30 *G.* 3. *c.* 48.; the first section of which enacts that women, convicted of high treason or petit treason, shall not be burned, but shall be drawn to the place of execution, and be there hanged.

30 G. 3. c. 48. Punishment for high or petit treason.

§ 2. In the case of petit treason, the court before whom women are convicted shall pass sentence at such time, and shall give such orders with respect to the time of execution and the disposal of the bodies, &c. as are directed to be given (by stat. 25 *G.* 2. *c.* 37.) with respect to persons convicted of murder. See Vol. II. p. 1042.

In case of felony, the judgment is the same against both man and woman, to be hanged by the neck till dead. 2 *Haw. c.* 48. § 7.

Plea of pregnancy.

It is clear, that if a woman quick with child be condemned either for treason or felony, she may allege her being with child in order to get the execution respited, and thereupon the sheriff shall be commanded to take her into a private room, and to impannel a jury of matrons, to try and examine whether she be quick with child or not; and if they find her quick with child, the execution shall be respited till her delivery. — But it is agreed that a woman cannot demand such respite of execution, by reason of her being quick with child more than once. 2 *Haw. c.* 51. § 9.

1 G. 4. c. 57.

By stat. 1 *G.* 4. *c.* 57. § 1. stat. 57 *G.* 3. *c.* 75., is repealed.

Judgment or sentence of whipping shall not be awarded on female offenders;

§ 2. Enacts, that from and after the passing of this act [15th *July*, 1820,] judgment or sentence shall in no case whatever be given and awarded against any female or females convicted of any offence whatsoever, that such female offender or offenders do suffer the punishment of being whipped either publicly or privately; any law, statute, or usage to the contrary notwithstanding.

but instead thereof imprisonment or solitary confinement.

§ 3. Enacts, that in all cases where the punishment of whipping either publicly or privately, on female offenders, has hitherto formed the whole or part of the judgment or sentence to be pronounced, or has in any other case been inflicted, it shall and may be lawful for the court or justice of the peace before whom any such offender shall be tried or convicted, to pass sentence of confinement to hard labour in the common gaol or house of correction, for any space of time not exceeding six months, nor less than one month, or of solitary confinement therein for any space not exceeding the space of seven days at any one time, in lieu of the sentence of being publicly or privately whipped, as to the said court or justice shall seem most proper: provided, that nothing herein contained shall extend, or be construed to extend, in any manner to change, alter, or affect any punishment whatsoever, which may now be by law inflicted in respect of any offence, save and except only the punishment of publicly or privately whipping on female offenders, in manner as hereinbefore is enacted.

Attending the torn and leet.

Women are not obliged to appear at the torn or leet. 2 *Haw. c.* 10. § 11.

Serving the office of constable.

Mr. *Hawkins* seems to be of opinion, that a custom of the inhabitants serving the office of constable by turns, is good; and

that when it comes to the turn of a woman inhabitant, she must procure one to serve for her. 2 *Haw. c.* 10. § 37. [And she may be appointed an overseer of the poor. *R.* v. *Stubbs*, 2 *T. R.* 395. See Vol. IV. p. 11.]

Wood.

See *ante*, tit. Trespass.

§ I. *Offences where Offenders unknown.*
[13 Ed. 1. st. 1. c. 46. — 3 & 4 Ed. 6. c. 3. — 1 G. 1. st. 2. c. 48. — 6 G. 1. c. 16. — 9 G. 1. c. 22. — 29 G. 2. c. 36. — 31 G. 2. c. 42. — 4 G. 4. c. 54.]

II. *Offences where Offenders known, amounting to Trespass only*
[37 H. 8. c. 6. — 43 El. c. 7. — 15 C. 2. c. 2. — 22 & 23 C. 2. c. 7. — 6 G. 1. c. 16. — 29 G. 2. c. 36. — 31 G. 2. c. 35. — 6 G. 3. c. 48. — 9 G. 3. c. 41. — 13 G. 3. c. 33. — 45 G. 3. c. 66. — 52 G. 3. c. 71. c. 72.]

III. *Offences, where Offenders known, amounting to Felony.*
[1 G. 1. st. 2. c. 48. — 9 G. 1. c. 22. — 6 G. 3. c. 36. c. 48. — 9 G. 3. c. 29. — 41 G. 3. U. K. c. 109. — 52 G. 3. c. 71. c. 72.]

IV. *Miscellaneous. — Encouragement of plantations of wood. — Export of wood.*
[35 H. 8. c. 17. — 1 & 2 P. & M. c. 5. — 29 G. 2. c. 36. — 31 G. 2. c. 41. — 4 G. 3. c. 31. — 10 G. 3. c. 42. — 52 G. 3. c. 71. c. 72.]

§ I. *Offences where Offenders unknown.*

13 Ed. 1. st. 1. c. 46. Pulling down hedges of ground improved.

WITH respect to the spoiling and stealing of wood, it is proper to insert here, in the first place, a clause in the statute of the 13 *Ed.* 1. *st.* 1. *c.* 46. (called the statute of *Westminster* the second,) both upon its own account and its being referred to afterwards by subsequent statutes: viz. *Where sometime it chanceth that one having right to approve, doth then levy a dyke or an hedge, and some by night, or at another season when they suppose not to be espied, do overthrow the hedge or dyke, and it cannot be known by verdict of the assize or jury who did overthrow the hedge or dyke, and men of the towns near will not indict such as be guilty of the fact; the towns near adjoining shall be distrained to levy the hedge or dyke at their own cost, and to yield damages.*

And by stat. 3 & 4 Ed. 6. c. 3. § 4. *Because that such persons as shall bring assize of novel disseisin upon the said statutes, or any of them, shall by force of the same statutes recover but only single damages, which is thought to be a small recompence for the same, therefore be it enacted, that all such persons as shall bring an assize hereupon, and have judgment to recover, shall have his damages trebled by the judgment of the court.* 3 & 4 Ed. 6 c. 3.

One having a right to approve.] Forasmuch as the lord ought to divide the parts of the common improved by the hedge, ditch, or other defence, now this clause provideth that if persons unknown, either in the night or otherwise, so secretly prostrate the ditches, hedges, or other fences, as the lord cannot know against whom to bring his assize or other action, and the men of the towns next adjoining thereunto round about do not indict the misdoers of the fact, those next towns round about shall be distrained to make the hedge or ditch at their own cost, and yield damages to the lord. 2 *Inst.* 476.

Indict.] That is, indict him at the king's suit, either of a riot, force, or trespass: But here it is demanded what *time* have the next towns round about adjoining to indict the misdoers, seeing there is no time appointed; and the answer is, that seeing no time is appointed, the law doth appoint (as in many cases it doth) a year and a day for the indicting of the misdoers: and by the indictment the lord shall know against whom to bring his actions. 2 *Inst.* 476.

The towns near adjoining shall be distrained to levy the hedge or dyke at their own cost, and to yield damages.] If the bordering towns do not within a year and a day indict the misdoers, then shall the lord, or other party grieved, bring his action upon this branch against the towns bordering round about the town wherein the fact was done, and judgment shall be given that they shall, at their proper costs, make the ditch or hedge, and yield damages; and after judgment given they shall be distrained to make the hedge or ditch. 2 *Inst.* 477.

The latter opinion, however, seems to be, that the towns must indict the misdoers within a *reasonable time*, of which the court shall judge; otherwise, upon a return of a writ of *noctanter*, a *distringas* shall issue against the inhabitants, though within a year and a day. *Rex* v. *Inhab.* of *Epworth*, *Cro. Car.* 439.

By stat. 1 *G.* 1. *stat.* 2. *c.* 48. § 1. If any person shall maliciously break down, cut up, pluck up, throw down, bark, or otherwise destroy, deface, or spoil any timber-tree or trees, fruit-tree or trees, or any other tree or trees, the person or persons, body politic or corporate, that is, are, shall or may be damaged by the same, shall receive such satisfaction and recompence of and from the inhabitants of the parish, town, hamlet, vill or place *where such tree or trees shall be so* maliciously *broken down*, cut up, pluckt up, thrown down, barked, destroyed, defaced, or spoiled, and to be viewed, and damages and costs to be recoverable and recovered against such parish, town, hamlet, vill or place, by the person or persons whose tree or trees shall be so maliciously broke down, &c. in the same manner and form as hedges and dikes overthrown by persons in the night, in and by stat. 13 *Ed.* 1. *st.* 1. *c.* 46. are to be levied and damages yielded, unless the party offending shall, by such parish, town, hamlet, vill, or place, be convicted of such offence, within six months from the committing such offence. 1 G. 1. st. 2. c. 48. Breaking down, &c. timber-trees, fruit-trees, or other trees

1 G. 1. st. 2. c. 48.

The preamble of this statute shews that it applies to cases in which the parties offending are not known.

6 G. 1. c. 16. Extending damages against parish, &c. for destruction of woods, &c. and fences and inclosures of the same, whether done by day or night.

Stat. 6 *G.* 1. *c.* 16. intituled, "*An act to explain and amend*" the former act, reciting certain mischiefs after mentioned; and that "some doubts have arisen whether the offences committed *in the day time* mentioned in that act are punishable by the said act. And whereas there is no provision made in the said act for punishing the offences committed by persons who shall break open, throw down, level, or destroy the hedges, gates, posts, stiles, railing, fences, ditches, banks, walls or other inclosures of such woods, wood grounds, plantations, and coppices: therefore, for the explaining and amending the said act, and for remedying the several mischiefs herein-before mentioned, and for the better preserving of all such wood springs, or springs of wood, poles, quick-woods, plantations, underwoods, coppice woods, gates, posts, stiles, railing, fences, hedges, walls, and other inclosures of woods, from being unlawfully cut, taken, spoiled, broken, burnt, destroyed, defaced, or carried away; and for the better discovering and more effectual punishment of such offenders therein, their aiders and abettors; and for the providing satisfaction for the damages the respective proprietors thereof shall sustain thereby," Enacts, that if any person or persons after the 24th of *June*, 1720, shall either by day or by night cut, take, destroy, break, throw down, bark, pluck up, *burn*, deface, spoil, or carry away, any wood springs or springs of wood, trees, poles, *wood*, tops of trees, *underwoods*, or *coppice woods*, thorns or quicksets, without the consent of the owner of such woods, wood grounds, parks, chaces, or coppices, plantations, timber trees, fruit trees, or other trees, thorns, or quicksets, or of the persons chiefly entrusted with the care and custody thereof; or shall break down, throw down, level, or destroy any hedges, gates, posts, stiles, railing, walls, fences, dikes, ditches, banks, or other inclosures of such woods, wood grounds, parks, chaces, or coppices, plantations, timber trees, fruit trees, or other trees, thorns, or quicksets," the party grieved shall recover damages against the parish, &c. in the same manner and form as for dikes and hedges overthrown by persons *in the night*, or at another season when they suppose not to be espied, as is provided by stat. 13 *Ed.* 1. *st.* 1. *c.* 46.

Thorns or quicksets.

9 G. 1. c. 22. Maliciously cutting trees in avenue, garden, &c.

By the black act, 9 *G.* 1. *c.* 22. [made perpetual by 31 *G.* 2. *c.* 42.] It was enacted, § 1. that if any person or persons (whether armed or disguised, as mentioned in the preceding part of the clause, or not,) shall unlawfully and maliciously cut down or otherwise destroy any trees planted in any avenue, or growing in any garden, orchard, or plantation, for ornament, shelter, or profit, or shall forcibly rescue any person being lawfully in custody of any officers or other person for any the offences before-mentioned; or if any person or persons shall by gift or promise of money or other reward procure any of H. M.'s subjects to join him or them in any such unlawful act; every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony without benefit of clergy.

4 G. 4. c. 54. Punishment.

But now by stat. 4 *G.* 4. *c.* 54. § 2. the above offences committed after the passing of this act are to be punished by transportation for life, or not less than seven years; or by imprisonment only, or imprisonment with hard labour in the common gaol or house of correction, for not exceeding seven years. See tit. **Black Act**, Vol. I. p. 365.

By stat. 9 *G.* 1. *c.* 22. § 7. The hundred shall answer damages (not exceeding 200*l.*) as in cases of robbery by the 27 *El.* See stat. 29 *G.* 2. *c.* 36. 9 G. 1. c. 22.

That is to say, the party may either take remedy for his damages against the hundred by this act; or against the parish, town, hamlet, vill, or place where the offence was committed, by stats. 1 *G.* stat. 2. *c.* 48. and 6 *G.* *c.* 16. as to him shall seem most meet.

By § 14. The trial may be in any county in *England*, as if the fact had been therein committed; and this at the option of any private prosecutor. See tit. Black Act, Vol. I. p. 362.

By stat. 29 *G.* 2. *c.* 36. § 6. If any person, after the time hereby limited for appealing to the sessions against any agreement for inclosure of part of any wastes, woods, or pastures (see stat. 29 *G.* 2. *c.* 36. § 1. p. 638.), shall either by day or night unlawfully cut, take, destroy, break, throw down, bark, pluck up, burn, deface, spoil, or carry away any trees growing in any such inclosure, without the consent of the owner or owners thereof, such owner shall have such remedy, and receive such satisfaction and recompence from the inhabitants of such parishes, towns, hamlets, villages or places adjoining to such inclosures, and recover such damage against them, and in the same manner and form as is directed by the aforesaid act of the 13 *Ed.* 1. st. 1. *c.* 46. unless the offender or offenders shall be convicted in six months. 29 G. 2. c. 36.

§ 7. And two justices, or the justices in sessions, on complaint may cause every such offender to be apprehended, and hear and determine the offence, and inflict the like penalty as is directed by the aforesaid act of the 6 *G.* 1. *c.* 16.

§ II. Offences, where Offenders known, amounting to Trespass only.

By stat. 37 *Hen.* 8. *c.* 6. "If any person or persons maliciously, willingly, or unlawfully do burn or cause to be burned any heap or heaps of wood of any other person or persons prepared, cut, and felled, or to be prepared, cut, or felled, for making of coals, billets, or talwood; then every such offender and offenders shall not only lose and forfeit unto the party grieved treble damages for such offence or offences (the same to be recovered by action of trespass), but also shall forfeit to the king for every such offence 10*l.* in the name of a fine." 37 H. 8. c. 6. Burning heaps of wood prepared for making coal, &c.

The offence herein described seems by the preamble to be pointed at such as commit it from a motive of malice to the owner of the property; for it recites that "malicious and *envious* persons being men of evil and perverse dispositions, &c. *and minding the hurt, undoing, and impoverishment of true and faithful subjects*, have of late invented a new damnable kind of vice, &c., and damnifying of the king's true subjects, &c., in committing such and such offences." 2 *East's P. C.* 1063.

By stat. 43 *Eliz.* *c.* 7. § 1. Every person who shall rob any orchards or gardens; or break or cut any hedge, pales, rails, or fence; or dig, pull up or take up any fruit tree or trees in any orchard, garden, or elsewhere, to the intent to take and carry the same away; or shall cut or spoil any woods or underwoods, poles, or trees standing (the same not being felony by the laws of this 43 Eliz. c. 7. Robbing orchards, breaking hedges, pulling up frui trees, spoiling wood growing

43 Eliz. c. 7. realm); every such person, his procurers and receivers, knowing the same, being therefore convicted, by confession, or oath of one witness, before one justice (or mayor or other head officer of the city or town corporate), shall give to the party such recompence and satisfaction for damages, and within such time, as the said justice shall appoint; and the same to be only for the first fault: And if such offender shall be thought, by the justice, &c. not able or do not make such recompence, then he shall commit him to the constable or other inferior officer where the offence shall be committed, or the party apprehended, to be whipped. And for every such offence for which the offender shall be eftsoons committed in form afore limited, the person so offending to receive the said punishment of whipping." (H. I. K.)

H. I. K.

§ 2. And if the constable, &c. shall not by himself or some other execute upon the offender the said punishment, the justice may commit him to the common gaol till he or some other by his procurement comply.

Number of the trees to be set forth in the conviction.

Cut or spoil any woods or underwoods, poles, or trees standing.] *Reg.* v. *Burnaby*, *Com.* 131. The defendant was convicted upon this statute, for cutting down several trees called lime trees, and damages given of 20*l.* It was objected, that the number of the trees ought to have been set forth, because this ought to be the measure of the damages; and if an action should be brought for the trespass, this conviction cannot be pleaded in bar, for it will not appear that the conviction was for the same trees; and therefore the number and quantity ought to be mentioned expressly in the conviction, as well as in action for the trespass. And for this cause the Court was of opinion that the conviction was ill.

Stealing trees growing, or apples upon the trees, not felony.

The same not being felony by the laws of this realm.] The distinction in which case seemeth to be this; if they be any way annexed to the freehold, as trees growing, or apples growing upon the trees, then the taking and carrying them away is not felony, but only a trespass, for a man cannot steal a part of a freehold; but if they be severed from the freehold, as wood cut, or apples gathered from the trees, then the taking of them is not a trespass only, but felony. See 2 *East's P. C.* 587. See tit. Larceny, Vol. III. p. 243.

15 C. 2. c. 2. Hedge breaking and other wood stolen.

By stat. 15 *C.* 2. *c.* 2. § 2. "Every constable, headborough, or any other person, in every county, city, town corporate, or other place where they shall be officers or inhabitants, shall and may, by virtue of this present act, have full power and authority to apprehend, or cause to be apprehended, all and every person or persons they shall suspect, having or carrying, or any ways conveying, any burthen or bundles of any kind of wood, underwood, poles, or young trees, or bark or bast of any trees; or any gates, stiles, posts, pales, rails, or hedge-wood, broom or furze; and by warrant (A) under the hand and seal of any one justice of the peace directed to any officer, such officer shall have power to enter into and search the houses, outhouses, yards, gardens, or other places belonging to the houses of all and every person or persons they shall suspect to have any kind of wood, underwoods, poles or young trees, or bark or bast of any trees, or any gates, stiles, posts, pales, rails or hedge-wood, broom or furze; and wheresoever they find any such, to apprehend and cause to be apprehended all and every person and persons suspected for the cutting and taking of the same, and

A.

Search in houses of suspected persons.

them and every of them, as well those apprehended carrying or any ways conveying any kind of wood, underwood, poles or young trees, or bark or bast of any trees, or any gates, stiles, posts, pales, rails or hedge-wood, broom or furze, as also those in whose houses, or other places belonging to them, any such wood, underwood, poles or young trees, or bark or bast of any trees, or any gates, stiles, posts, pales, rails or hedge-wood, broom or furze, shall be found, to carry before one justice of the peace of the same county, city, or town corporate: And if the said person and persons so suspected, apprehended, and carried before the said justices, do not then and there give a good account how he and they came by such wood or underwood, poles or young trees, or bark or bast of any trees, or gates, stiles, posts, pales, rails or hedge-wood, broom or furze, by the consent of the owner, such as shall satisfy the said justice, or else shall not within some convenient time, to be set them by the said justice, produce the party or parties of whom they bought the same wood, underwood, poles or young trees, or bark or bast of trees, gates, stiles, posts, pales, rails or hedge-wood, broom or furze, or some other credible witness, to depose upon oath such sale of the said wood, underwood, poles or young trees, or bark or bast of trees, gates, stiles, posts, pales, rails, or hedge-wood, broom or furze (which oath the said justice hath hereby power to administer), then the said person or persons so suspected, and not giving such good account, nor producing any such witness upon oath to testify the said sale as aforesaid, shall be deemed and adjudged as convicted of the said offence, of cutting and spoiling of the same woods, underwoods, poles or young trees, or bark or bast of trees, gates, stiles, posts, pales, rails or hedge-wood, broom or furze, within the meaning of the said stat. 43 *Eliz. c.* 7. and shall be liable to the punishments therein contained, and to such other proceedings and punishments as by this act shall be further appointed. 15 C. 2. c. 2.

§ 3. That is to say, every person shall for the first offence give the owner or owners such recompence or satisfaction (B) for his or their damages, and within such time, as the said justice shall appoint, and over and above pay down presently unto the overseers for the use of the poor of the parish where the said offence or offences were committed, such sum of money (not exceeding ten shillings) as the said justices shall think meet; and if such offender or offenders do not make recompence or satisfaction to the said owner or owners, and also pay the said sum to the poor in manner and form aforesaid, then the said justice shall commit (C) the said offender or offenders to the house of correction, for such time as the said justice shall think fit, not exceeding one month, or to be whipped (D) by the constable or other officer, as in his judgment shall seem expedient: and if such person or persons shall again commit the said offence, and be thereof convicted as before, then they and every of them, so offending the second time and thereof so convicted, shall be sent to the house of correction for one month, and be there kept to hard labour: and if such person or persons shall again commit the said offence, and be thereof convicted as before, then they and every of them, so offending the third time and thereof so convicted, shall be taken, adjudged, and deemed as incorrigible rogues.

Punishment for the first offence. B. C. D. **The second offence.**

15 C.2. c.2. § 5. Provides that no person shall be punished by this act unless he be questioned in six weeks after the offence committed.

Buying stolen wood. § 4. Whosoever shall buy any burdens of wood, or any poles or sticks of wood, or any other the premises particularly mentioned in this bill, which may be justly suspected to have been stolen or unlawfully come by, one justice, &c. (on complaint in six weeks as aforesaid after the offence committed) may examine the matter on oath; and if he shall find that the same was bought of a person who might justly be suspected to have stolen or unlawfully come by the same, and that the same was stolen or unlawfully come by, he may award the party who bought the same to pay treble value

E. (E) to him from whom it was stolen or unlawfully taken; and in default of present payment, may issue his warrant to levy the

F. same by distress (F); and in default of distress, to commit the party to gaol at his own charge, there to remain one month without bail.

22 & 23 C.2. c. 7. Destroying timber or other trees, or plants, or shrubs, in the night. By stat. 22 & 23 *C*, 2. *c*.7. § 5, 6, 7. If any person shall in the night time maliciously, unlawfully, and willingly destroy any plantations of trees, or throw down any inclosures, he shall forfeit to the party grieved treble damages: and three justices (1 Q.) may enquire thereof in six months, as well by a jury as by examination of witnesses on oath, or by any lawful ways which to them shall seem meet.

6 G.1. c.16. Destroying woods, underwoods, coppices, plantations, trees, &c. enquirable by justices of peace, and punishable as under stat. 1 G.1. st. 2. c. 48. Stat. 6 *G*. 1. *c*.16. § 2. Enacts, that "if any person or persons, at any time after the 24th of *June* 1720, in a riotous, open tumultuous, or in a secret and clandestine manner, forcibly, or wrongfully and *maliciously*, and without the consent of the proprietor, wood-reeve, wood-keeper, or person chiefly entrusted with the care, oversight, and custody of such woods, wood-grounds, parks, chaces, coppices, or plantations, shall cut down, destroy, break, bark, throw down, burn, take, deface, spoil, or carry away, any wood or springs of wood, underwood, or coppice wood; or shall in such a riotous, forcible, tumultuous, secret, or clandestine manner, as aforesaid, maliciously break open, throw down, level, or destroy any hedges, gates, posts, stiles, rails, fences, ditches, banks, or inclosures of such woods, wood-grounds, coppices, plantations, timber trees, fruit trees, or other trees, thorns, or quicksets; that then it shall and may be lawful to and for any two or more justices of the peace of the county, &c. wherein any such offence or offences shall be committed, or for the justices in open sessions, upon complaint to them made by any inhabitant of the aforesaid parish, &c. or place, or of the owner of such tree or trees, woods, wood-grounds, parks, chaces, coppices, or plantations, or of any other, to cause such offender or offenders to be apprehended for the trespasses and offences aforesaid, or any of them, and to hear and finally determine and adjudge all and every the offence and offences aforesaid."

1 G.1. st.2. c.48. § 2. And on conviction such justices shall commit (G) the offender

G. to the house of correction to hard labour for three months; and where there is no house of correction, then to the prison for four months; and shall also order the offender to be publicly whipped by the master of such house of correction once a month, during such three months, if it is in a borough, or in the market town where such house of correction stands, or in the next market town next adjacent to such house of correction, on the market day, be-

tween the hours of eleven and two. And where there is no house of correction, the said justices shall order him to be whipped by the common hangman once a month during such four months, on the market day of such borough, or on the market day of some town, between the hours of eleven and two. § 3. And before he shall be discharged, he shall find sufficient sureties, for his good behaviour, for two years.* 1 G. 1. st. 2. c. 48.

And by stat. 29 *G.* 2. *c.* 36. § 8. If any person shall unlawfully cut, take, destroy, break, throw down, bark, pluck up, burn, deface, spoil, or carry away, any tree growing in any waste, wood, or pasture, in which any person hath right of common; he shall be in like manner convicted, and incur the like penalty, as by stat. 6 *G.* 1. *c.* 16. 29 G. 2. c. 36. Destroying trees, growing in wastes, &c.

By stat. 6 *G.* 3. *c.* 48. § 1. Every person who shall wilfully cut or break down, bark, burn, pluck up, lop, top, crop, or otherwise deface, damage, spoil or destroy, or carry away any timber tree, or trees likely to become timber, or any part thereof, or the lops or tops thereof, without the consent of the owner (or in any of H. M.'s forests or chases, without the consent of the surveyor or his deputy, or persons entrusted with the care thereof), and shall be thereof convicted, on the oath of one witness before one justice; shall, for the first offence, forfeit not exceeding 20*l.* together with the charges previous to and attending such conviction, to be ascertained by such justice; on non-payment thereof, to be committed by such justice to the common gaol, for any time not exceeding twelve months, nor less than six, or until the penalty and charges shall be paid: for the second offence, to forfeit not exceeding 30*l.* together with the charges, as aforesaid; on non-payment, to be committed as aforesaid, for any time not exceeding eighteen months, nor less than twelve, or until the penalty and charges shall be paid: and if any person shall be guilty of a like offence a third time, and shall be thereof convicted in like manner (*a*) he shall be deemed guilty of felony; and the court, before whom he shall be tried, shall have authority to transport him for seven years. And all oak, beech, chesnut, walnut, ash, elm, cedar, fir, asp, lime, sycamore, and birch-trees (and also poplar, alder, larch, maple, and horn beam, stat. 13 *G.* 3. *c.* 33.) shall be deemed timber trees, within the meaning of this act. 6 G. 3. c. 48. Cutting or damaging or carrying away timber trees. Penalty for the first offence. For second offence. Third offence, felony. What shall be deemed timber trees. (13 G. 3. c. 33.)

§ 3. 6. And every person who shall pluck up, or cut, spoil, or destroy, or take, or carry away any root, shrub, or plant, roots, shrubs, or plants, out of the fields, nurseries, gardens, or garden grounds, or other cultivated lands, of any person, without the consent of the owner, and shall be thereof convicted upon the oath of one witness before one justice, shall for the first offence forfeit not exceeding 40*s.* together with the charges previous to and attending such conviction, to be ascertained by such justice; 6 G. 3. c. 48. Destroying, damaging, or taking away roots, shrubs, or plants in fields or cultivated lands. For first and second offences, a penalty.

(*a*) Here seems to be a mistake. Being convicted *in like manner*, implies a summary conviction, as before directed, before one justice; but it cannot be intended that a justice shall in this manner have power to transport a man. But the word *court* afterwards, before which he shall be convicted (that is, of assize, or *sessions*, as it seemeth by the following words of the act), implies a legal trial by jury. And therefore these words [*in like manner*] ought to have been omitted.

Perhaps, observes Sir *E. H. East*, the words *in like manner* were intended only to mean *by the like evidence*. 2 *East's P. C.* 590.

6 G.3. c.48. and if not paid immediately, the said justice shall commit him to the house of correction for one month, to be kept to hard labour, and once whipped there; for the second offence, shall forfeit not exceeding *5l.* together with the charges as aforesaid; if not paid immediately, then to be committed to the house of correction for three months, to be kept to hard labour, and whipped there once in every of the said three months: and if any person shall a third time commit the like offence, and shall be thereof convicted, he shall be deemed guilty of felony, and the court before whom he shall be tried shall have authority to transport him for seven years.

Third offence, felony.

6 G. 3. c. 48. 9 G.3. c.41. Destroying, &c. in woods, &c. wood, &c. or young trees.

§ 4. And every person who shall go into the woods, underwoods, or wood-grounds, of any of H. M.'s subjects, not being the lawful owner thereof, and shall there cut, lop, top, or spoil, split down, or damage, or otherwise destroy, any kind of wood, or underwood, poles, sticks of wood, green stubs, or young trees, or carry or convey away the same (or by stat. 9 *G.* 3. *c.* 41. § 8. shall, by night or day, cut down, destroy, take, carry or convey away, any hollies, thorns, or quicksets, growing or being upon any of H. M.'s forests, or chases, or within the woods or wood-grounds of any of H. M.'s subjects), or shall have in his custody any kind of wood, underwood, poles, sticks of wood, green stubs, or young trees (or any such hollies, thorns or quicksets, as aforesaid, 9 *G.* 3. *c.* 41.), and shall not give a satisfactory account how he came by the same; and shall be thereof convicted, before one justice, on the oath of one witness, shall, for the first offence, forfeit not exceeding 40*s.* together with the charges previous to and attending the conviction, to be ascertained by such justice; and if not paid immediately, the said justice shall commit him to the house of correction for one month, to be kept to hard labour, and once whipped there; for the second offence, shall forfeit not exceeding *5l.* together with the charges as aforesaid; if not paid immediately, then to be committed to the house of correction for three months, to be kept to hard labour, and whipped there once in every of the said three months: and if any person shall commit any of the offences aforesaid a third time, he shall, being duly convicted thereof according to law, be deemed an incorrigible rogue, and punished as such. See stat. 5 *G.* 4. *c.* 83. § 5. and § 10. tit. Vagrants, *ante*, p. 567. 570. and the recital of these sections in stat. 45 *G.* 3. *c.* 66. *post*, p. 633.

Hollies, &c.

Third offence,

Power of the justices.

§ 5. And H. M.'s justices of the peace of the respective places where any of the said offences shall be committed, shall put this act in execution.

Distribution of the penalties.

§ 8. The said forfeitures to be distributed, half to the informer, and half to the person aggrieved.

Hindering the execution.

§ 7. And if any person shall hinder, or attempt to prevent, the seizing or securing any person employed in carrying away any such timber or other trees, he shall forfeit 10*l.* to him who shall convict such offender; if not paid immediately on conviction, the justice before whom he shall be convicted shall commit him to the house of correction, to hard labour, not exceeding six calendar months.

§ 9. The conviction to be written on parchment or paper, in the following form, or to the like effect:

——— } *BE it remembered, that on the* ——— *day of* ———, *in the year* ———, A. B. *was upon the complaint of* C. D. *convicted before* ——— *of the justices of the peace for* ———, *in pursuance of an act passed in the sixth year,* [or if the prosecution is on stat. 9 *G.* 3. *c.* 41. then say, *in the ninth year*] *of the reign of his majesty king* George *the third for* ——— (as the case shall be).
to wit.

6 G. 3. c. 48. Conviction.

Given under ——— *hand and seal, the day and year above written.*

Which conviction shall be certified to the next sessions, there to be filed amongst the records. And the same shall not be quashed for any want of form; nor be removed by *certiorari.*

45 G. 3. c. 66. Recital of 6 G. 3. c. 48. § 4. against spoiling, &c. woods of private persons.

Stat. 45 *G.* 3. *c.* 66. after reciting that *Whereas* by stat. 6 *G.* 3. *c.* 48. § 4. it was enacted, that all and every person and persons, who, from and after the 24th *June* 1766, should go into the woods, underwoods, or wood grounds of any of H. M's subjects, not being the lawful owner or owners thereof, and should there cut, lop, top, or spoil, split down, or damage, or otherwise destroy any kind of wood or underwood, poles, sticks of wood, green stubs, or young trees, or carry and convey away the same, or should have in his, her, or their custody any kind of wood or underwood, poles, sticks of wood, green stubs, or young trees, and should not give a satisfactory account how he, she, or they came by the same, and should be thereof convicted before any one or more of H. M.'s justices of the peace, on the oath of one or more credible witness or witnesses, should for the first offence forfeit and pay, immediately on conviction, any sum not exceeding the sum of 40*s.*, together with the charges previous to and attending such conviction, to be ascertained by the said justice or justices who should convict the offender or offenders; and if any person or persons should commit any of the offences aforesaid a second time, and should be thereof again convicted in manner aforesaid, he, she, or they should forfeit and pay any sum not exceeding the sum of 5*l.*, together with the charges previous to and attending such conviction, to be ascertained as aforesaid; and if any person or persons should commit any of the offences aforesaid a third time, that then such person and persons, being duly convicted thereof according to law, should be deemed and adjudged an incorrigible rogue or rogues, and should be punished as such: *And whereas* by stat. 9 *G.* 3. *c.* 41. § 8. for the better preservation of hollies, thorns, and quicksets, in forests, chases, and private grounds, and of trees and underwoods in forests and chases, it was enacted, that after 1st of *July* 1769, the said clause made in the said act of 6 *G.* 3., and all and every the penalties, forfeitures, and punishments thereby inflicted, and all other provisions, clauses, matters, and things relating thereto, should extend, and should be deemed, taken, and construed to extend, and should be applied and put in execution in relation to all H. M.'s forests and chases within this realm, and to all and every person or persons who should, without legal right or authority, by night or day, cut down, destroy, take, carry, or convey away any hollies, thorns, or quicksets, growing or being upon any of H. M.'s said forests or chases, or within the woods or wood grounds of any of H. M.'s subjects, or who should have in

Recital of 9 G. 3. c. 41. § 8. against spoiling, &c. woods of H. M.

c. 66. his, her, or their custody or possession any such hollies, thorns, or quicksets, and should not give a satisfactory account how he, she, or they came by the same, and should be thereof convicted before any one or more of H.M.'s justices of the peace in the manner prescribed and directed by the said act, and such justice or justices is or are thereby authorised to administer oaths, and proceed in the like manner for the conviction and punishment of every offender in the premises, as fully and effectually to all intents and purposes, as if the several provisions in the said act had been therein particularly repeated and applied to the offences therein before specified: and Whereas great quantities of bark have of late been taken and carried away from out of H.M.'s woods, forests, and chases, by persons not having legal right or authority to take and carry away the same, and it is proper to prevent such evil practices and abuses for the future; and it is expedient also to extend the provisions of the said acts, to all woods and wood grounds belonging to H.M., as well in right of his duchy of *Lancaster*, as otherwise: Enacts, that from and after the passing of this act, the aforesaid clauses in the said recited acts, and all and every the penalties, forfeitures, and punishments thereby inflicted, and all other provisions, matters, and things relating thereto, shall extend, and be deemed, taken, and construed to extend, and shall be applied and put into execution, in relation to all woods and wood grounds, belonging to H. M. in *G. B.*, as well in right of his duchy of *Lancaster*, as otherwise, and whether such woods or wood grounds shall be within any of H. M.'s forests or chases or not, and also to all and every persons and person who shall, without legal right or authority, by night or day, take, carry, or convey away any bark, being in any forests or chases, or woods or wood grounds, belonging to H. M. as well in right of his duchy of *Lancaster*, as otherwise, or within the woods or wood grounds of any of H. M.'s subjects in *G. B.*, or who shall have in his, her, or their custody or possession any bark, and shall not give a satisfactory account how he, she, or they came by the same, and shall be thereof convicted before any one or more of H. M.'s justices of the peace, in the manner prescribed and directed by the said first-recited act; and such justice or justices is or are hereby authorised to administer oaths, and proceed in the like manner for the conviction and punishment of every offender in the premises, as fully and effectually, to all intents and purposes, as if the several provisions in the said first-recited act had been herein particularly repeated and applied to the offences hereinbefore specified.

Extending the provisions of former acts to woods belonging to H. M. and to persons who shall take away bark from woods or wood grounds.

Conviction to be certified to the sessions.

§ 2. The conviction of every offender against this act shall be certified by the justice of the peace before whom the same shall be made, to the next general quarter sessions of the peace, to be filed amongst the records of the said sessions; and such conviction shall be fairly written on parchment or paper, in the following form of words, or (as the case shall happen) in any other form of words to the like effect; that is to say,

County of ——— to wit. } *BE it remembered, that on the* ——— *day of* ———, *in the year* ———, A. B. *was, upon the complaint of* C. D., *convicted before* ——— *of the justices of the peace for* ———, *in pursuance of an act passed in the forty-fifth year of the reign of his majesty king* George *the*

third, for ——— [as the case shall be]. *Given under* ——— *hand and seal, the day and year above written.* 45 G.3. c.66.

Which said conviction shall be good and effectual in law to all intents and purposes, and shall not be quashed, set aside, or adjudged void or insufficient, for want of any form or words whatsoever, nor be liable to be removed by *certiorari* into H. M.'s court of K. B., but shall be deemed and taken to be final to all intents and purposes whatsoever.

Persons offending more than three times, to be punished for every subsequent offence as an incorrigible rogue.

§ 3. If any person or persons shall commit any of the said offences specified in the said recited acts or this act more than three times, and shall be thereof convicted before any one or more of H. M.'s justices of the peace, in the manner prescribed and directed by the said first recited act, every such person shall for every such offence, committed subsequent to the third offence, be deemed and adjudged an incorrigible rogue or rogues, and shall be punished as such. See title Vagrants, *ante*, p. 567.: and stat. 1 *G.* 4. *c.* 56. tit. Trespass.

52 G.3. c.72. *Alice Holt* forest.

By stat. 52 *G.* 3. *c.* 72. The king is allowed to inclose not exceeding 1600 acres of land in the forest of *Alice Holt*, in the county of *Southampton*.

Penalties on persons damaging trees in the forest of *Alice Holt*.

And by § 6. For the better preservation of the trees, woods, underwoods, heritors, and standils growing, or which may hereafter be planted and nourished to grow or be growing in or upon any part of the said inclosures, all persons whomsoever who shall, from and after the passing of this act, unlawfully cut down, split, bark, peel, damage, deface, destroy, or carry away any timber tree or other tree, woods, or covert, green stick, or any heritor or standil within the said forest as aforesaid, shall be subject to all such pains, penalties, and punishments, as are imposed upon any person committing the like offence in the lands, grounds, woods or coppices, being inclosed, and the private property of any of H. M.'s subjects.

Penalties for breaking down inclosures.

And by § 7. Every person who shall wilfully destroy or take away, or shall break down any fence or inclosure, or any part thereof, made for the protection of any nursery of wood and timber as aforesaid, shall for the first offence forfeit the sum of 10*l.*, and for the second offence the sum of 20*l.*, and for the third offence shall be deemed guilty of felony, and may be transported to any part beyond the seas for the term of seven years, or be subject to such other punishment by fine, imprisonment, or otherwise, as the court, before which such person shall be convicted, may direct; and such penalties may be recovered, and on nonpayment thereof the person who shall forfeit the same may be committed to prison, in the manner and for the same periods as is specified in stat. 6 *G.* 3. *c.* 48. in relation to the penalties of 20*l.* and 30*l.* respectively, for wilfully cutting or breaking down any timber under the said act.

52 G.3. c.71. *Woolmer* forest.

And by stat. 52 *G.* 3. *c.* 71. Similar provisions are enacted respecting the forest of *Woolmer*, in the county of *Southampton*; where the king is allowed to inclose 2000 acres.

50 G.3. c.77. 52 G.3. c.117. Duty.

[By stats. 50 *G.* 3. *c.* 77. and 52 *G.* 3. *c.* 117. Certain duties of customs are imposed upon wood imported, and regulations enacted relating thereto.]

52 G. 3. c. 71. Penalties for breaking down inclosures in the forest of *Woolmer*.

Stat. 52 *G.* 3. *c.* 71. contains provisions respecting the forest of *Woolmer*, and the timber growing there; and certain inclosures to be there made: and by § 7. every person who shall wilfully destroy or take away or shall break down any fence or inclosure or any part thereof made for the protection of any nursery of wood and timber as aforesaid, shall for the first offence forfeit 10*l.*, and for the second offence 20*l.*, and for the third offence shall be accounted guilty of felony, and may be transported for seven years, or be subject to such other punishment by fine, imprisonment, or otherwise, as the court, before which such person shall be convicted, may direct; and such penalties shall be recovered, and on non-payment thereof, the person who shall forfeit the same may be committed to prison in the manner and for the same periods as are specified in stat. 6 *G.* 1. *c.* 48. intituled, *An act for the better preservation of timber trees, and of woods and underwoods, and for the further preservation of roots, shrubs, and plants*, in relation to the penalties of 20*l.* and 30*l.* respectively for wilfully cutting or breaking down any timber under the said act.

31 G. 2. c. 35. Madder roots.

By stat. 31 *G.* 2. *c.* 35. § 5. If any person shall steal and take away, or wilfully and maliciously pull up or destroy any madder roots growing or being in the lands or grounds belonging to any person, and shall be convicted thereof before one justice, by confession, or oath of one witness, he shall for the first offence pay to the owner such satisfaction for damages and in such time, as the justice shall appoint, and moreover shall pay down upon the conviction to the overseers for the use of the poor such sum, not exceeding 10*s.*, as to the justice shall seem meet; and if he shall not make such recompense, and also so pay such sum to the use of the poor, the said justice shall commit him to the house of correction for any time not exceeding one month, or may order him to be whipped by the constable or other officer as to the justice shall seem meet; and for the second offence he shall be commited to the house of correction for three months.

§ 6. Prosecution to be commenced within 30 days.

§ III. Offences, where Offenders known, amounting to Felony.

1 G. 1. st. 2. c. 48.

By stat. 1 *G.* 1. *stat.* 2. *c.* 48. § 4. If any person shall maliciously set on fire, or burn, or cause to be burnt, any wood, underwood, or coppice, or any part thereof, the same shall be felony.

22 & 23 C. 2. c. 7. Destroying timber or other trees, or plants, or shrubs, in the night.

By stat. 22 & 23 *C.* 2. *c.* 7. § 5, 6, 7. If any person shall in the night-time maliciously, unlawfully, and willingly destroy any plantations of trees, or throw down any inclosures, he shall forfeit to the party grieved, treble damages; and three justices (1 Q) may enquire thereof, in six months, as well by a jury, as by examination of witnesses on oath, or by any lawful ways, which to them shall seem meet.

Vide stat. 9 *G.* 1. *c.* 22. § 1. the Black Act, *ante*, p. 626.

6 G. 3. c. 36.

Stat. 6 *G.* 3. *c.* 36. enacts, "that after the 2d of *June* 1766, all and every person and persons who shall *in the night-time* lop, top, cut down, break, throw down, bark, *burn*, or *otherwise spoil* or *destroy*, or carry away, any oak, beech, ash, elm, fir, chesnut,

or asp, timber tree, or other tree or trees standing for timber, or likely to become timber, without the consent of the owner or owners thereof first had and obtained; or shall *in the night-time* pluck up, dig up, break, spoil, or destroy, or carry away, any root, shrub, or plant, roots, shrubs, or plants, of the value of 5*s*., and which shall be growing, standing, or being in the garden ground, nursery ground, or other inclosed ground of any person or persons whomsoever, shall be deemed and construed to be guilty of felony; and every such person or persons shall be subject and liable to the like pains and penalties as in cases of felony; and the Court, before whom such person or persons shall be tried, shall and hereby have authority to transport such person and persons for seven years to any of H. M.'s plantations in *America*, in like manner as other felons are directed to be transported by the laws and statutes of this realm. And all and every person and persons who shall be *wilfully* aiding, abetting, or assisting in such cutting down, breaking, throwing down, barking, burning, or otherwise spoiling, or destroying, or carrying away, any such oak, beech, ash, elm, fir, chesnut, or asp, timber tree, or other tree or trees standing for timber, or likely to become timber, as aforesaid; or in such plucking up, digging up, cutting, breaking, spoiling, or destroying, or carrying away, such root, shrub, or plant, roots, shrubs, or plants, as aforesaid, of the value aforesaid; or who shall buy or receive such root, shrub, or plant, roots, &c. of the value aforesaid, knowing the same to be stolen, shall be subject and liable to the same punishment as if he, she, or they had stolen the same, any law to the contrary in anywise notwithstanding." *Vide* stat. 6 *G* 3. *c*. 48. *ante*, p. 631.

6 G.3. c.36.

Destroying roots, shrubs, or plants, of 5s. value.

Transportation for seven years.

Aiders and abettors.

The name of the owner of the trees must be truly stated in the indictment, otherwise it is fatal. *R*. v. *Patrick and Pepper*, *O. B. Feb. sess*. 1783. 1 *Leach*, 253.

Vide the provisions of stat. 6 *G*. 3. *c*. 48. *ante*, p. 631.

In the case of *Hitchcock* v. *Howe*, 2 *East's P. C*. 588. 1 *Leach*, 481., eleven judges present, in *Hilary* term 1788, all held that the first of these acts is not repealed by the second; but that they shall be considered as one act, being passed in the same session. They said it was mere accident in what order the chapters in the statute book were arranged; it depended on the will of the clerks of the parliament: and if the chapters were transposed in this case, there could be no doubt that the result of the two acts, construed together, would be, that if the property taken or destroyed were of the value of 5*s*. and the fact were done in the night-time, it was felony under the former statute; but that in all other cases the offence must be prosecuted under the last act. But that the court were not obliged to transport the offender under the first act, but might pass any other sentence that could be passed for a single felony. *Buller* J. said, that if the two statutes had been made in different sessions, undoubtedly the last would have been a virtual repeal of the former.

6 G.3. c.36.
6 G.3. c.48.

By stat. 9 *G*. 3. *c*. 29. § 3. "If any person or persons shall, after the 1st of *July* 1769, wilfully or maliciously set fire to, burn, demolish, pull down, or otherwise destroy or damage, any fence or fences that are or shall be erected, set up, provided, or made, for dividing or inclosing any common, waste, or other lands or grounds, in pursuance of any act or acts of parliament; every such person

9 G.3. c.29.

Destroying inclosures made under act of parliament.

9 G.3. c.29. being lawfully convicted of any or either of the said several offences, or of causing or procuring the same to be done, shall be adjudged guilty of felony, and shall be subject to the like pains and penalties as in cases of felony; and the court, before whom such person shall be tried, shall have authority to transport such felon for seven years, in like manner as other felons," &c. 2 *East's P. C.* 1064. 2 *Russ.* 1707.

§ 4. The prosecution to be commenced within eighteen months after the offence committed.

41 G.3. (U.K.) c.109. gives a forfeiture for destroying any fences, &c. put up under inclosure acts.

The General Inclosure Act 41 *G.* 3. (*U. K.*) *c.* 109. § 28. [See Vol. III. p. 15.] imposes a forfeiture not exceeding *5l.* on any person who shall wilfully and unlawfully break down, destroy, carry away, or damage any fence, stile, post, rail, gate, bridge, or tunnel, put up under the authority and for the purposes of any inclosure act, upon conviction before a justice for the county, &c. See stat. 52 *G.* 3. *c.* 71. *c.* 72. *ante,* p. 635, 636.

§ IV. Miscellaneous Statutes; Encouragement of Plantations of Wood; Export of Wood.

35 H.8. c.17. Cutting down woods wherein there is common of pasture.

By stat. 35 *H.* 8. *c.* 17. § 7. intituled *The bill for the preservation of woods,* No person who shall have any woods or underwoods, wherein others have common of pasture, shall cut down the same, until the fourth part thereof shall be set out and fenced by the lord with the assent of the major part of the tenants; and if they cannot agree, then two justices, being thereunto appointed by the more number of the justices of the shire in their quarter sessions, shall set out the same.

29 G.2. c 36. Encouragement of the plantation of wood.

By stat. 29 *G.* 2. *c.* 36. § 1. It shall be lawful for the king, and all other owners of wastes, woods, and pastures, wherein any persons or bodies politic have common of pasture, with the assent of the major part in number and value of the owners and occupiers of tenements, to which the right of common of pasture doth belong, and for the major part in number and value of the owners and occupiers of such tenements, with the assent of the owners of the wastes, woods, and pastures; and for any other person, with the assent and grant of the owner of such wastes, woods, pastures, and of the major part in number and value of the owners and occupiers of such tenements, to inclose and keep in severalty, for the growth and preservation of timber or underwood, any part of such wastes, woods, and pastures, for such time and in such manner and upon such conditions as shall be agreed by them respectively.

31 G.2. c.41. By stat. 31 *G.* 2. *c.* 41. This word *owners* shall extend to tenants for life, and for term of years: provided, that nothing done by such tenants for life or years shall have effect or continuance after determination of such their estate.

29 G.2. c.36. By stat. 29 *G.* 2. *c.* 36. § 5. All bodies politic or corporate, whether aggregate or sole, feoffees in trust, executors, administrators, guardians, committees, or other trustees whatsoever, and the husbands of femes covert, may agree to such inclosure, and such their agreement shall be valid.

§ 2. And in case the owner of such wastes, woods, or pastures, and the major part in number and value of the owners and occu-

piers of such tenements, shall jointly agree to assign their right for the purpose aforesaid to any other person, such owner shall not have an estate in fee-simple therein, or shall be restrained from alienating; the recompense to be paid to such owner shall be either by a grant of a share of the profit from the sale of such timber or underwood, or by a grant of other lands, or of an annuity or rent-charge issuing out of the ground so inclosed, or out of other lands; such equivalent to be held and enjoyed by the owner of such wastes, woods, and pastures, and such as shall be entitled to the same in reversion, remainder or succession, in like manner as the estate in such woods, wastes, or pastures is limited to be held and enjoyed. 29 G.2. c.36.

And by stats. 29 *G.*2. *c.*36. § 2. and 31 *G.*2. *c.*41. Where any recompense shall be agreed to be given for such inclosure to or to the benefit of the owners and occupiers of such tenements, it shall be made either by a grant of a share of the profit which shall arise from the sale of such timber or underwood, or by a grant of other lands; or by some annuity or rent-charge issuing out of the ground so inclosed, or out of other lands; or shall be paid in money, to be placed out at interest on public securities, or laid out in the purchase of lands, or of some annuity or rent-charge issuing out of lands; and the produce thereof, until such purchase shall be made, and also every recompense to be made by virtue of the said act of the 29 *G.*2., shall be applied and given to the persons interested in the right of common, in proportion to their respective interests. 29 G.2. c.36. 31 G.2. c.41.

By stat. 29 *G.*2. *c.* 36. § 2. Where the inhabitants of any parish or township shall be willing to acquire such right of inclosure, for the employment and benefit of their poor, they may (by the consent and direction of the major part of the inhabitants, assembled at a vestry or public meeting to be held for that purpose, public notice thereof in the church being first given on three *Sundays* before) pay the recompense for the same, and the charges of inclosing and preserving such grounds, out of the poor rate; and shall apply the profit from the sale of such timber or underwood towards the relief of the poor. *Note.* Here is no allowance for the charges of planting. 29 G.2. c.36. **Where it is for the relief of the poor.**

§ 3. And the agreement for such inclosure shall be in writing, and signed by the parties, and, within three months after the execution thereof, be enrolled by the clerk of the peace where the greater part of such wastes, woods, or pastures shall lie.

And by stat. 10 *G.* 3. *c.* 42. further time is given for such inrolment, provided the same shall have been made on or before *Dec.* 25. 1770. And inclosures made before the passing of this act of 10 *G.* 3. *c.* 42., though not strictly according to the directions of the said former acts, are enacted to be good and valid. 10 G.3. c.42.

By stat. 29 *G.* 2. *c.* 36. § 4. Persons aggrieved by such agreement may, within six months after the enrolment, appeal to the sessions, whose determination shall be final. And if no such appeal shall be made, the agreement shall be for ever binding. 29 G.2. c.36.

By stat. 4 *G.* 3. *c.* 31. § 6. For the better preventing the destruction of timber trees, and other trees, underwood, and covert, in forests and chases, it shall be lawful for every surveyor of H. M.'s 4 G.3. c.31. **Preservation of wood in forests.**

4 G.3. c.31. woods, and his lawful deputy, and for the officers and keepers of any forest or chase (besides the penalties for destroying the trees or underwood), to seize and take away for his own use, any saw, axe, hatchet, bill-hook, or other instrument, used by any person whom they shall find unlawfully stocking up, sawing, cutting down, topping, lopping, or destroying, any timber tree, or other tree, underwood or covert, within such forest or chase.

1 & 2 P. & M. c. 5. Exporting wood.

By stat. 1 & 2 *P. & M. c.* 5. § 2. No person shall carry any wood out of the realm, on pain that the owner of the ship shall forfeit the ship and tackle; the owner of the wood, double the value of the wood; and the master and mariners all their goods, and be imprisoned for a year.

§ 3. And if any person shall carry any wood to any ship, to be transported, the owners, masters, and mariners shall forfeit in like manner.

§ 4. If any person shall obtain of the king a licence to transport wood, and shall carry more than is contained in his licence, he shall forfeit treble value, and be imprisoned for a year.

§ 5. And they which have licences shall lade all at one place certain; on pain of forfeiting all their goods and chattels.

§ 6. The said forfeitures to be half to the king and half to him that shall sue in any court of record: moreover, all and singular justices of the peace within three years after any offence committed, may hear and determine the same by a jury.

See stat. 52 *G.* 3. *c.* 71. *c.* 72. *ante*, p. 635, 636.

A. (A) Warrant to search for Stolen Wood; on Stat. 15 *Car.* 2. *c.* 2. *ante*, p. 628.

County of ———. To the constable of ———.

WHEREAS A. I. *of* ———, *yeoman, hath this day made oath before me* J. P. *esquire, one of his majesty's justices of the peace for the said county, that divers quantities of wood, within the space of six weeks last past, have been cut, taken away, and carried off and from his lands at* ——— *in the same county* [or, as the case may be]; *and that he hath just cause to suspect, and doth suspect, that the said wood, or part thereof, is concealed in the houses, out-houses, yards, gardens, or other places belonging to such houses of* A. O. *of* ———, *labourer, at* ———, *aforesaid; These are therefore to require you to enter into and search the said houses, out-houses, yards, gardens, or other places, belonging to such houses of him the said* A. O. *at* ——— *aforesaid; and if, on such search, you shall there find any such wood, that then you apprehend the person in whose house, out-house, or other place it shall be found, and bring him before me, or some other of his majesty's justices of the peace for the said county, that such proceedings may be had thereupon as to law doth appertain. Given under my hand and seal at* ———, *in the said county, the* ——— *day of* ———, *in the year* ———.

(B) Order for Satisfaction to the Owner; on Stat. 15 *Car.* 2. *c.* 2. *ante*, p. 629. B.

County of ——— } *WHEREAS* A. I. *of* ———, *in the said county, yeoman, on the* ——— *day of* ———, *now last past, did make oath before me* J. P. *esquire, one of his majesty's justices of the peace for the said county, that on or since the* ——— *day of* ———, *now last past, a certain quantity of wood, the property of him the said* A. I. *at* ———, *in the parish of* ———, *in the county aforesaid, was cut and spoiled, and from thence taken and carried away; and that he had just cause to suspect, and did suspect, that* A. O. *of* ———, *in the said county, labourer, did cut, spoil, take, and carry away the same: And whereas the said* A. O. *was on the* ——— *day of* ——— *now last past apprehended by* A. C. *constable of* ———, *in the said county, carrying wood, suspected to be stolen by him the said* A. O. [Or, *whereas a certain quantity of wood, to wit* (here specifying the same), *suspected to be stolen, was this day by virtue of my warrant for that purpose directed to the constable of* ——— *in the said county, found in the house* (or other place) *of the said* A. O. *at* ——— *aforesaid*]; *And whereas the said* A. O. *being now brought before me hath not given to me any satisfactory account how he came by the said wood, nor can produce the party of whom he bought the same, nor any credible witness to testify upon oath the sale thereof; therefore the said* A. O. *is convicted by me of cutting, spoiling, taking, and carrying away the said wood; And whereas also it is duly proved before me that* A. I. *of* ——— *aforesaid, yeoman, was and is the owner of the said wood, and that the said offence was committed at* ———, *aforesaid, in the parish of* ——— *in the said county; I do therefore hereby order and appoint the said* A. O. *within the space of* ———, *days now next ensuing, to pay unto the said* A. I. *the sum of* ———, *in recompense and satisfaction for damages done unto him the said* A. I. *by him the said* A. O. *in cutting, spoiling, taking, and carrying away the said wood; and I do also hereby order the said* A. O., *within the space of* ——— *days now next ensuing as aforesaid, to pay to the overseers of the poor of the parish of* ———, *aforesaid, for the use of the poor of the said parish, the sum of ten shillings for his said offence. Given under my hand and seal at* ———, *in the said county, the* ——— *day of* ———, *one thousand eight hundred* ———.

J. P. (*L. S.*)

(C) Commitment thereupon for Non-payment. C

County of ——— { To the constable of ———, and to the keeper of the house of correction at ———, in the said county.

WHEREAS A. I. *of* ———, *in the said county, yeoman, on the* ——— *day of* ——— *now last past, did make oath before me* J. P. *esquire, one of his majesty's justices of the peace for the said county, that within the space of six weeks then last past, a certain quantity of wood, the property of him the said* A. I. *at* ———, *in the parish of* ———, *in the county aforesaid, was*

cut and spoiled, and from thence taken and carried away; and that he had just cause to suspect, and did suspect, that A. O. *of* ———, *in the said county, labourer, did cut, spoil, take, and carry away the same: And whereas the said* A. O. *was on the* ——— *day of* ———, *now last past, apprehended by* A. C. *constable of* ——— *in the said county, carrying wood, suspected to be stolen by him the said* A. O. [Or, *whereas a certain quantity of wood* (specifying the particulars), *suspected to be stolen, was on the* ——— *day of* ——— *now last past, by virtue of my warrant for that purpose directed to the constable of* ———, *in the said county, found in the house* (or other place) *of the said* A. O. *at* ———, *aforesaid*] *; And whereas the said* A. O. *on the* ——— *day of* ———, *now last past, having been brought before me, did not and could not give to me any satisfactory account how he came by the said wood, nor could produce the party of whom he bought the same, nor any credible witness to testify upon oath the sale thereof, and thereupon was by me convicted of cutting and spoiling the said wood, and ordered to pay to the said* A. I. *the owner of the said wood, the sum of* ——— *within* ——— *days then next ensuing, in recompense and satisfaction for damages, and also the sum of ten shillings to the overseers of the poor of the parish of* ———, *aforesaid, where the said offence was committed, for the use of the poor of the said parish; and whereas it appears to me that the said several sums have been duly demanded of him the said* A. O. *and that he the said* A. O. *hath refused and doth refuse to pay and hath not yet paid the same nor any part thereof: I do therefore hereby require you the said constable of* ———, *aforesaid to convey the said* A. O. *to the said house of correction at* ———, *aforesaid, and to deliver him to the keeper thereof, together with this warrant: And I do hereby command you the said keeper to receive him into your custody in the said house of correction, and there to detain him for the space of* ——— *days. Herein fail you not. Given under my hand and seal at* ——— *in the said county the* ——— *day of* ———, *in the* ——— *year* ———.

D. (D) If instead of being sent to the house of correction, he is ordered to be whipped, then say, — *I do therefore hereby command you the said constable forthwith to receive the said* A. O. *into your custody, and to whip him according to the statute in that case made and provided.*

E. (E) Order for the Buyer of Stolen Wood to pay Treble Damages; on Stat. 15 *C.* 2. *c.* 2. p. 630.

County of ——— } *WHEREAS it hath been duly proved before me* ———, *esquire, one of his majesty's justices of the peace for the said county, that* A. O. *of* ———, *labourer, did within the space of six weeks now last past buy several burdens of wood of* B. O. *of* ———, *labourer, and that he the said* B. O. *is justly suspected to have stolen the same from* A. I. *of* ———, *yeoman, and that the said wood, at the time when the said* A. O. *so bought the same, was of the value of ten shillings: I do therefore hereby order that the said* A. O. *do forthwith pay unto the said*

A. I. the sum of thirty shillings, the same being treble value of the said wood so by him bought as aforesaid. Given under my hand and seal at ———, in the said county, the ——— day of ———, in the ——— year of the reign of ———.

(F) Warrant of Distress for Non-payment of the same, *ante*, p. 630. F.

County of ——— } ——— Here recite the order ——— Then say, *And whereas the said A. O. hath not paid to the said A. I. the aforesaid sum of thirty shillings, nor any part thereof: These are therefore to command you to make distress of the goods and chattels of him the said A. O.; and if within the space of [five] days next after such distress, by you made, the said sum of ——— together with the reasonable charges of taking and keeping the said distress shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale pay the said sum of ——— unto him the said A. I., returning the overplus upon demand unto him the said A. O., the reasonable charges of taking, keeping, and selling the said distress being thereout first deducted. Given, &c.*

(G) Commitment for destroying Trees; on Stats. 1 *G.* 1. *st.* 2. *c.* 48. and 6 *G.* 1. *c.* 16. *ante*, p. 630. G.

County of ——— } To the constable of ———, and to the keeper of the house of correction at ——— in the said county.

FORASMUCH as A. O. of ——— in the county aforesaid, labourer, is this day duly convicted before us J. P. and S. P. esquires, two of his majesty's justices of the peace for the said county, for that he the said A. O. on the ——— day of ———, now last past, at ———, aforesaid, in the county aforesaid, did wrongfully and maliciously cut down two ash trees [or as the case shall be], *the property of A. I. of ———, yeoman, without the consent of him the said A. I. the owner thereof, or of any other person chiefly entrusted with the care and custody thereof: We do therefore hereby command you the said constable to convey the said A. O. to the said house of correction at ———, aforesaid, in the county aforesaid, and to deliver him to the keeper thereof, together with this precept. And we do also hereby require you the said keeper of the said house of correction to receive him the said A. O. into your custody in the said house of correction, and him there keep to hard labour for the space of three months now next ensuing, and until he shall find sufficient sureties for his good behaviour for two years. And we do likewise hereby order you the said keeper of the said house of correction publicly to whip him the said A. O. once in every month, during the said three months, in the market town of ———, in the said county, on the market day there, between the hours of eleven in the forenoon and two in the afternoon. And for so doing this shall be your sufficient warrant. Given under our hands and seals, at ———, in the said county, the ——— day of ———, in the ——— year ———.*

H. (H) Information for robbing a Garden or Orchard, on Stat. 43 *Eliz. c.* 7. § 1. p. 627, 628.

County of } *THE information and complaint of* A. I. *of* ———, ——— } *in the said county,* ———, *made on oath before me* J. P. *esquire, one of his majesty's justices of the peace in and for the said county, the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ——; *Who says, that on the* ——— *day of* ——— *instant, his garden* [or *orchard,* as the case may be], *situated at* ———, *in the parish of* ———, *in the said county, was robbed by* A. O. *of* ———, *in the said county, labourer, who took and carried away from the fruit trees growing in the said garden* [or *orchard,* as the case may be], *a large quantity of apples* [or, as the case may be], (*the same not being felony by the laws of this realm*) *contrary to the form of the statute in such case made and provided: And thereupon the said* A. I. *prays the judgment of me the said justice in the premises.*

Before me, A. I.
J. P.

I. (I) Warrant to apprehend thereupon.

County of } To the constable of ———, in the said county.
——— }

WHEREAS information and complaint upon oath have been made before me J. P. *esquire, one of his majesty's justices of the peace in and for the said county, by* A. I. *of* ———, *in the said county,* ———, *that on the* ——— *day of* ———, *instant, his garden* [or *orchard,* as the case may be], *situated at* ——— *in the parish of* ———, *in the said county was robbed by* A. O. *of* ———, *in the said county, labourer, who took and carried away from the fruit trees growing in the said garden* [or *orchard,* as the case may be], *a large quantity of apples* [or, as the case may be], (*the same not being felony by the laws of this realm,*) *contrary to the form of the statute in such case made and provided. These are, therefore, to require you to apprehend the said* A. O., *and bring him before me at* ———, *in the said county, on* ——— *the* ——— *day of* ———, *instant, at the hour of* ——— *in the forenoon, to answer unto the said information and complaint, and to be further dealt with according to law. Herein fail not. Given under my hand and seal the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ——.

J. P. (*L. S.*)

K. (K) Commitment of an Offender to the Constable to be whipped for robbing Gardens or Orchards, on Stat. 43 *Eliz. c.* 7. § 1. p. 627, 628.

County of } To the constable of the parish of ——— in the said
——— } county.

WHEREAS A. I. *of* ———, *in the said county,* ———, *on the* ——— *day of* ——— *now last past, did make oath before me* J. P. *esquire, one of his majesty's justices of the peace in and

for the said county, that on the ——— day of ———, instant, his garden [or *orchard*, as the case may be], *situated at* ———, *in the parish of* ———, *in the said county, was robbed by* A. O. *of* ———, *in the said county, labourer, who took and carried away from the fruit trees growing in the said garden* [or *orchard*, as the case may be], *a large quantity of apples* [or as the case may be], (*the same not being felony by the laws of this realm*) *contrary to the form of the statute in such case made and provided: And whereas the said* A. O. *on the* ——— *day of* ———, *having been brought before me and duly convicted of the said offence by the oath of* A. W., *a credible witness* [or, *upon his own confession*, as the case may be], *and thereupon ordered by me to pay to the said* A. I., *the owner of the said fruit, the sum of* ———, *as a recompence and satisfaction for damages in so robbing the said garden* [or *orchard*, as the case may be], *of the said fruit. And whereas it appears to me, that the said sum has been duly demanded of him the said* A. O., *and that he the said* A. O. *has refused, and does refuse to pay the same, and is moreover thought by me the said justice not able to make such recompense: I do, therefore, hereby command you the said constable forthwith to receive the said* A. O. *into your custody, and to whip him according to the directions of the statute in such case made and provided. And for your so doing this shall be your sufficient warrant. Herein fail you not. Given under my hand and seal at* ———, *in the said county, the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———.

Woollen Manufacture. (a)

WHEREIN,

§ I. *Concerning the Winding of Wool.*
[27 Ed. 3. stat. 2. c. 23. — 8 H. 6. c. 22. — 23 H. 8. c. 17. — 28 G. 3. c. 38. — 50 G. 3. c. 83.]

II. *Exportation of Live Sheep and Wool.*
[28 G. 3. c. 38. — 54 G. 3. c. 78. — 1 & 2 G. 4. c. 81. — 5 G. 4. c. 47.]

III. *Concerning Cards for Manufacturing Wool.*
[13 & 14 C. 2. c. 19. — 26 G. 3. c. 76.]

IV. *Concerning the deceitful Working of Woollen Cloth.*
[13 G. 1. c. 23. — 17 G. 2. c. 5. — 49 G. 3. c. 109.]

V. *Concerning the Fulling of Cloth.*
[4 Ed. 4. c. 1. — 7 Ed. 4. c. 3. — 28 G. 3. c. 38.]

VI. *Concerning the Searching of Cloth, and therein of the Length, Breadth, and Weight thereof.*
[49 G. 3. c. 109.]

(a) Vide *ante* title Settlement, page 151.

VII. *Concerning the Dyeing of Cloth.*
[6 Ann. c. 8. — 23 G. 3. c. 15. — 49 G. 3. c. 109.]

VIII. *Concerning Tenters, and the Stretching of Cloth.*
[22 C. 2. c. 5. — 15 G. 2. c. 27. — 22 G. 3. c. 40. — 49 G. 3. c. 109. — 4 G. 4. c. 46. c. 53.]

IX. *Concerning the dressing of Cloth.*
[3 H. 7. c. 11.]

X. *Concerning mixed or medley Broad Cloth in particular; especially in* Gloucestershire, Wiltshire, *and* Somersetshire.
[49 G. 3. c. 109.]

XI. *Concerning the* Yorkshire *Manufacture in particular.*
[11 G. 2. c. 28. — 5 G. 3. c. 51. — 6 G. 3. c. 23. — 49 G. 3. c. 109.]

XII. *Concerning the Burying of Dead in Woollen Cloth.*
[54 G. 3. c. 108.]

XIII. *Against Importation of Woollen Cloth, and Encouragement of the Exportation of Woollen Manufactures.*
[11 Ed. 3. c. 3. — 4 Ed. 4. c. 1. — 11 & 12 W. 3. c. 20.]

XIV. *Privileges granted to Wool-combers.*
[49 G. 3. c. 109.]

[By stat. 50 *G.* 3. *c.* 83., stats. 1 *R.* 3. *c.* 8. 5 *H.* 8. *c.* 3. 27 *H.* 8. *c.* 13. and 33 *H.* 8. *c.* 19. are repealed.]

§ I. Concerning the Winding of Wool.

8 H. 6. c. 22. Deceitful winding.

By stat. 8 *Hen.* 6. *c.* 22. No man shall make any inwindings within the fleece, at the rolling up of his wool; nor put in the same, locks, pelt, wool, tar, stones, sand, earth, grass, nor any dirt; and if he do, the party grieved may bring his action at common law of trespass and deceit.

23 H. 8. c. 17.

By stat. 23 *Hen.* 8. *c.* 17. No person shall wind any fleece not sufficiently washed, except in counties where they do not use to wash sheep; nor shall wind with any fleece, clay, lead, stones, sand, tails, deceitful locks, cot, cals, comber, lamb's wool, or any other thing whereby the fleece may be the more weighty, to the deceit and loss of the buyer (except where fleeces are sold by number, and not by weight): on pain that the seller shall forfeit 6*d.* a fleece, half to the king, and half to him that shall sue.

28 G. 3. c. 38. Power of the justices.

But by reason of the said penalty being but small, and one moiety therefore going to the king, and the great expense attending the recovery thereof, by stat. 28 *G.* 3. *c.* 38. § 79. 81. it is enacted, that every person offending against the said act, shall, in lieu of every 6*d.* therein directed to be forfeited, forfeit and pay 2*s.*, the whole whereof shall be paid to the finder or prover of the said deceits: and such offences from henceforth shall be proceeded upon, heard, and determined by one justice residing at or near the place, in a summary way; who shall summon the offender

against whom any information shall be laid; and on his appearance or default may examine into and give judgment in the premises; and in case the penalty shall not to be paid within *six* days next after conviction, the same shall be levied by distress, under warrant of the convicting justice. 28 G. 3. c. 38.

§ 80. Provided, that if it shall appear to the satisfaction of such justice that the matter complained of was not done or suffered with an intent to deceive the buyer, or that any clay, sand, or earth found in such fleece was not intentionally put there to make the same more weighty, but became mixed or connected therewith by reason of the necessary pasturing, folding, or keeping of the sheep, whereon such fleece shall have been grown subsequent to the rivering or washing such sheep; such justice shall discharge such complaint, and acquit the person accused. When not done fraudulently.

§ 82. And whereas it may frequently happen, that the seller of such deceitful wool, falsely wound or folded, may not be the person who actually wound or folded the same, or that it was so wound or folded without the knowledge or consent of such seller, in such case such seller of wool, touching which any complaint or information has been made, and which shall be then pending, immediately after he shall have received such summons as aforesaid, may apply to the justice who granted the same, and require him, on information being given for that purpose, to summon the person who actually wound or folded such wool to appear before him at such time and place as he shall think proper (of which sufficient notice shall be given by such seller to the person complaining); and whether the person charged with being such winder appear or not (proof being made of his having been duly summoned), such justice may hear and determine the matter of such complaint; and if it shall appear to his satisfaction that the wool complained of had been actually wound or folded falsely and deceitfully by the person then charged by the seller, without his knowledge or consent, in such case such winder, and not the seller, shall be liable to the penalties aforesaid; but if it shall appear otherwise to such justice, or be determined otherwise upon hearing the appeal hereafter given, then the seller shall remain subject to the said penalties; and in case of non-payment of any such penalty, or that the same cannot be recovered after conviction, every such person shall be committed to the common gaol or house of correction for the county, riding, or place, for any time not exceeding *three* calendar months, nor less than 21 days; unless the penalty and costs (if any) be sooner paid. Whether the penalty shall be paid by the seller or the winder.

§ 83. Any person who shall think himself aggrieved by the determination of such justice may appeal to the next sessions, giving notice in writing within five days then next after such conviction to the respondent in such appeal, and at the time of making such appeal entering into recognisance with two sufficient sureties before the said justice to appear and prosecute the same at the said sessions, and to abide such order or determination, and to pay such cost and charges as shall be awarded against such person by the court. Appeal.

§ 84. Provided that no conviction made or judgment given upon any offence in this act mentioned or created, shall be set aside for want of form.

28 G.3. c.38. Winders of wool may be sworn at the sessions.

§ 85. And whereas by stat. 27 *Ed.* 3. *st.* 2. *c.* 23. a certain number of winders of wool were to be sworn, and such winders were to repair to be sworn to the mayor of the staple at *Westminster*, which is inconvenient and expensive; it is therefore enacted, that the justices at the general quarter sessions, or any adjournment, shall and may administer to every person desirous of becoming a sworn winder of wool, and who shall produce a certificate under the hands of any two growers of wool, testifying to the satisfaction of such justices, that such person is properly qualified, an oath to the following purport:

Oath.

I A. B. *do swear that I will truly and justly, without deceit, wind and fold all and singular the wool which I shall take upon me to wind and fold, without leaving or putting any clay, lead, stones, sand, tails, deceitful locks, lamb's wool, or any other thing, whereby the fleece may be made more weighty, to the deceit and loss of the buyer; and that I will not use any other deceit, craft, guile, or fraud, in the winding or folding of any such aforesaid wool.* So help me God.

An entry of administering the said oath shall be made in the records of such sessions, and a certificate thereof shall be delivered by the clerk of the peace to the person so sworn.

But persons not sworn may be employed.

§ 86. Provided always, that nothing herein shall prevent any one from employing any person in winding wool, although not sworn in manner aforesaid.

§ II. Exportation of Live Sheep and Wool.

28 G.3. c.38. All former acts repealed.

By stat. 28 *G.* 3. *c.* 38. § 1. All former acts, so far as they relate to the carrying coastwise, or to the isles of *Jersey*, *Guernsey*, *Alderney*, *Sark*, and *Man*, or to the exportation of *live sheep*, *rams*, and *lambs*, *wool*, *woolfels*, *mortlings*, *shortlings*, *yarn*, or *worsted* made of *wool*, *wool-flocks*, *cruels*, *coverlids*, *waddings*, or other manufactures, or pretended manufactures, made of *wool slightly wrought up*, or otherwise put together so as the same may be reduced to and made use of as wool again, or *mattrasses*, or *beds* stuffed with combed wool, or wool fit for *combing* or *carding*, or *fullers' earth*, *fulling clay*, or *tobacco-pipe clay*, were repealed; except so much of stat. 9 & 10 *W.* 3. *c.* 40. as related to wool shorn, laid up, or lodged within ten miles of the sea side in *Kent* or *Sussex*, or to persons residing within fifteen miles of the sea in the said counties (with a proviso by § 10. that nothing in the act should extend to prohibit the exportation of tobacco-pipe clay to any *British* sugar colony or plantation in the *West Indies*, so long as the same is allowed by stat. 17 *G.* 3. *c.* 43. § 10.).

54 G.3. c.78.

By stat. 54 *G.* 3. *c.* 78. So much of stats. 9 & 10 *W.* *c.* 40. and 28 *G.* 3. *c.* 38. as required that notice shall be given or entry made by the owner or owners of wool shorn or housed, or laid up or lodged within ten miles of the sea side; or as required any certificate of any wool or number of fleeces shorn or housed, or removed or disposed of; or as required notice or bond to be given or entry made or any permit to be taken out, or licensed certificate, or other instrument, before the removal of any wool; or as

required any certificate to be taken from any officer; or as prohibited any persons residing near the sea from selling or buying wool without having entered into bond; or as subjected to forfeiture, wool carried towards the sea side, unless the same has been entered; or as subjected wool first found within ten miles of the sea to forfeiture if afterwards lodged within fifteen miles of the sea; or as subjected any wool, or any horse or carriage carrying the same between sun-set and sun-rise to any forfeiture, is repealed. 51 G. 3. c. 78.

By stat. 1 & 2 *G.* 4. *c.* 81. So much of stat. 28 *G.* 3. *c.* 38. as required a registry of wool carried coastwise was repealed. 1 & 2 G. 4. c. 81.

And now by stat. 5 *G.* 4. *c.* 47. § 2. From 10 *Dec.* 1824., all acts and parts of acts of the parliaments of *G. B.* and *Ireland* respectively, and of the parliament of the U. K. of *G. B.* and *Ireland*, whereby the exportation from any part of the U. K., or from the islands of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, to foreign parts, or the carrying coastwise of sheep or lambs' wool, or any manufacture thereof, or of sheep or lambs alive, or of hare or coney wool, or of hare or coney skins, is prohibited or restrained, or whereby the packing, marking, or moving of wool, or of any manufactures thereof, within any part of the U. K. or of the islands of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, is in any way regulated, shall be repealed. The duties on wool, hare and coney skins and articles manufactured of wool exported from the U. K. are specified in table (B).

5 G. 4. c. 47. From Dec. 10, 1824, all acts and parts of acts prohibiting the exportation of wool, &c. repealed, and the duties specified in table (B.) on the exportation of certain skins and wool, &c. shall be paid.

By § 1. Duties on wool and hare skins are to cease from *Sept.* 10. 1824., and instead thereof the duties specified in Table (A) shall be payable.

By § 3. The same duties are to be payable on wool, hair, or skins warehoused, when taken out for home consumption.

By stat. 28 *G.* 3. *c.* 38. § 74. Actions and informations for offences against this act shall be tried by a jury of freeholders, summoned out of any other county than that wherein the fact was committed. 28 G. 3. c. 38.

TABLE (A.)

A Table of the Duties of Customs payable on certain Sorts of Wool and Hare Skins, imported into the United Kingdom from foreign Parts.

	£	s.	d.
Hare skins, the 100 skins - - -	0	1	0
Wool or hair; viz.			
—— Hare and coney wool, the lb. - -	0	0	2
From and after the 10th day of *September*, 1824, and until the 11th day of *December*, 1824; viz.			
—— Sheep or lambs' wool, or goats' or camels' wool or hair, the produce of, and imported directly from any *British* possession, the lb.	0	0	1
—— - - - the produce of, or imported from any other place, the lb. - - -	0	0	3
From and after the 10th day of *December*, 1824; viz.			
—— Sheep or lambs' wool, the produce of, or imported from any place not being a *British* possession, the lb. - - -	0	0	1

TABLE (B.)

A Table of Duties of Customs payable on certain Wool, Manufactures of Wool and Skins, exported from the United Kingdom to foreign Parts.

	£	s.	d.
Skins; viz.			
—— Coney skins, the 100 skins - - - -	0	1	0
—— Hare skins, the 100 skins - - -	0	1	0
Wool; viz.			
—— of sheep or lambs, and of hares and of conies, the lb. - - - - - -	0	0	1
Woollen manufactures; viz.			
Woolfels, mortlings, shortlings, yarn, worsted, woolflacks, cruels, coverlids, waddings, or other manufactures or pretended manufactures, slightly wrought up or put together, so as the same may be reduced to, and made use of, as wool again; mattresses or beds stuffed with combed wool, or wool fit for combing or carding, the lb. - - - -	0	0	1

§ III. Concerning Cards for the Manufacturing of Wool.

By stat. 13 & 14 *C.* 2. *c.* 19. No foreign wool-cards or card wire shall be imported or used; nor shall any wire be taken out of old cards, and put into new leather and boards, nor any cards made thereof be put to sale; on pain of forfeiting the same, or the value thereof, if the same be not seized, half to the king, and half to him that shall seize or sue for the same in any court of record at *Westminster*, or within any county, city, or town corporate, where the offence shall be committed. 13 & 14 C. 2. c. 19.

By stat. 26 *G.* 3. *c.* 76. so much of stats. 14 *G.* 3. *c.* 71. and 21 *G.* 3. *c.* 37. as prohibited the exportation of wool-cards, or stock-cards not exceeding in value 4*s. per* pair, and spinners' cards not exceeding 1*s.* 6*d. per* pair, used in the woollen manufacture is repealed. 26 G. 3. c. 76.

§ IV. Concerning the deceitful Working of Woollen Cloth.

[By stat. 49 *G.* 3. *c.* 109. § 1, 2., stats. 43 *El.* *c.* 10., 21 *J.* 1. *c.* 18., and 13 *G.* 1. *c.* 23. § 3, 4. 6. relating to this head are repealed.]

By stats. 13 *G.* 1. *c.* 23. § 8. and 17 *G.* 2. *c.* 5. § 4. If any person shall be found collecting, buying, receiving, or carrying or conveying in any bag, or other convenience, any ends of yarn, wefts, thrums, short yarn, or other refuse of cloth, drugget, or other woollen goods, or goods mixed with wool (flocks and pinions only excepted), the constable may by warrant of one justice search such person, bag, or other convenience; and if any the same be found, he shall carry the offender before a justice of the peace, who, on conviction before him, by confession, or oath of one witness, shall be deemed a dangerous and *incorrigible rogue, vagrant, or person*; and liable to be punished as such person is by 12 *An. st.* 2. *c.* 23. directed to be punished. [*Note*, Stat. 12 *Ann. st.* 2. *c.* 23. is repealed by stat. 5 *G.* 4. *c.* 83. § 1. *ante*, tit Vagrant, p. 563, 564. See the present punishment, stat. 5 *G.* 4. *c.* 83. § 5. *ante*, p. 567, 568. as extended to former acts by § 21. *ante*, p. 574.] 13 G. 1. c. 23. 17 G. 2. c. 5. Collecting, or carrying ends of yarn, &c.

In *Rex* v. *Terrett*, 2 *T. R.* 735. (before the repeal of stat. 17 *G.* 2. *c.* 5. by stat. 5 *G.* 4. *c.* 83. § 1.) it was held, that where proceedings were had before justices, partly under stat. 13 *G.* 1. *c.* 23. which contains a clause taking away a *certiorari*, and partly under stat. 17 *G.* 2. *c.* 5. which had no such clause; those proceedings which were had under the former act could not be removed, but that those which were had under the latter act might. Rex v. Terrett.

§ V. Concerning the Fulling of Cloth.

By 4 *Ed.* 4. *c.* 1. § 6. Every fuller, in his craft and occupation of fulling, rowing, or tayselling of cloth, shall use taysels, and no cards, deceitfully impairing the said cloth, on pain to yield to the party grieved his double damage; and every justice of the peace, 4 Ed. 4. c. 1. Teazles to be used and not cards.

4 Ed. 4. c. 1. mayor, master, warden, bailiff, portreeve, constable of hundred, and steward of leet, in their respective liberties, may hear and determine the same, and commit the offender to the next gaol till payment.. And also any person not grieved may make information to any such justice, mayor, master, warden, bailiff, portreeve, or steward, in which case the offender shall forfeit to the king, or to such person as shall be entitled to fines or amercements within their jurisdiction, 3*s.* 4*d.*; and they may make process against the party in like manner as justices of the peace may do for sureties of the peace, without any fee to be taken for the execution of their offices in this behalf.

7 Ed. 4. c. 3. Export of cloth not fulled prohibited.

And by stat. 7 *Ed.* 4. *c.* 3. No cloth not fulled shall be exported, on pain of forfeiting the same, half to the king, and half to him that will sue.

By stat. 28 *G.* 3. *c.* 38. The exportation of fullers' earth and fulling clay is prohibited, except, &c. § 1. [See § II. under this title.]

§ VI. Concerning the Searching of Cloth, and therein of the Length, Breadth, and Weight thereof.

[By stats. 3 & 4 *Ed.* 6. *c.* 2., 5 & 6 *Ed.* 6. *c.* 5., 4 & 5 *P.* & *M.* *c.* 25., 39 *El.* *c.* 20., 43 *El.* *c.* 10., 4 *J.* *c.* 2., 21 *J.* *c.* 18. Several provisions relating to this branch of the woollen manufacture were enacted; but they were, together with many others relating to the

49 G. 3 c. 109. same subject, repealed by stat. 49 *G.* 3. *c.* 109.; which last act also repeals stat. 3 *J.* 1. *c.* 16. § 2, 3, 4.]

Yard and inch. For the measuring of cloth, the statutes generally provide that the yard shall consist of a standard yard, and the breadth of a man's thumb besides; or 37 inches in the whole.

§ VII. Concerning the Dyeing of Cloth.

39 & 40 G. 3. c. 109. [By stat. 49 *G.* 3. *c.* 109., stats. 3 & 4 *Ed.* 6. *c.* 2., and 36 *Ed.* 6. *c.* 6. are repealed.]

6 An. c. 8. Exporting white woollen cloth.

By stat. 6 *Ann.* *c.* 8. For the encouragement of dressing and dyeing of cloth, no person shall export any white woollen broad cloth until he have paid duty of 5*s.* for every such cloth, on pain of forfeiting the same or the value thereof, half to the king, and half to him that shall seize, inform, or sue.

23 G. 3. c. 15. By stat. 23 *G.* 3. *c.* 15., (repealing stat. 13 *G.* 1. *c.* 24.) If any person shall dye any woollen goods for mather blacks, not being first dyed throughout with woad and indigo, he shall forfeit for every piece of long *Bocking* bays, containing 70 yards or upwards, 5*l.*; of *Colchester* bays or short bays, containing 35 yards or upwards, 50*s.*; for every piece of other woollen goods, 6*d.* a-yard.

And if any person shall dye any woollen cloth for woaded black, the same not being woaded throughout, he shall forfeit 2*s.* a-yard.

§ 3. And all woollen goods truly mathered black shall be marked with a red rose and a blue rose: and when truly woaded black,

shall be marked with a blue rose only: and if any person shall counterfeit or forge, or cause, &c. any of the said marks, or shall dye, stain, imprint, or affix any such mark to or upon any such woollen cloths falsely and deceitfully dyed as or for mathered or woaded blacks, he shall forfeit 4*l.* for every piece of such woollen goods upon which such mark shall be so stained, &c. 23 G.3. c.15.

§ 4. If any person shall use any logwood or logwood liquor in dying any woollen goods blue, he shall forfelt 20*l.* for each piece. Using logwood in dyeing blue.

§ 5, 6, 7, 8 & 9. relate to the appointment of searchers in *London,* and places within 10 miles of *London:* And by § 10, 11. elsewhere the justices in sessions shall appoint searchers; who shall have like powers as searchers within the said limits, who shall take the following oath; "*I do swear that I will faithfully, impartially, and honestly execute and perform the trust reposed in me as a searcher by virtue of an act of parliament made in the twenty-third year of the reign of his majesty king* George *the third, for rendering more effectual the provisions contained in an act of the thirteenth year of king* George *the first, for preventing frauds and abuses in the dyeing trade.*" (Which act of 13 *G.* 1. is repealed by the same act of the 23 *G.* 3.) Searchers appointed and sworn.

§ 12. And if any person shall oppose, obstruct, hinder, or prevent any searcher, he shall forfeit 10*l.*

§ 5. The persons appointed searchers within the said limits, are to be searchers of all shops, warehouses, workhouses, and tenter grounds, or drying places, of all persons using or exercising the trade of dyeing of cloths, bays, or other woollen goods, and also of every person concerned in the dyeing, drying or packing of any such cloths, &c. and also all public warehouses and other public places, where any cloths, &c. packed up for exportation shall be deposited; and every such searcher may at all seasonable times, in the day time, enter into any such shop, &c. and examine all or any woollen goods dyed black or blue, whether packed or unpacked, and also cut and take away a pattern or sample from either end of every such piece of woollen goods as he shall think proper, for the purpose of trying and proving the same, such searcher taking to his assistance a constable or other peace officer of the parish or place wherein such shop, &c. shall be; and every such constable or other officer shall aid or assist such searcher in the execution of this act whenever application shall be made to him for that purpose.

§ 14. Prosecution for offences against this act shall be commenced within forty days. And by § 13. the penalties, and forfeitures, exceeding 5*l.* shall be recovered in the courts at *Westminster;* those not exceeding 5*l.* shall be recovered before one justice: Which justice shall, on proof of the offence by confession or oath of one witness, levy the penalty by distress and sale; if sufficient distress cannot be found, and the penalties and forfeitures be not immediately paid, the offender shall be committed to the house of correction, there to be kept to hard labour not exceeding three months. The said penalties, if in *London,* or within ten miles thereof, shall go half to the informer, and half in such manner as the persons attending any meeting to be holden for the appointment of searchers within such limits, shall appoint; Penalties how to be recovered and applied.

23 G. 3. c. 15. and the whole of all other penalties and forfeitures recovered by virtue of this act, shall go to the informer and prosecutor.

Appeal. § 14. If any person is aggrieved by the order of any justice, he may appeal to the next general quarter sessions, giving reasonable and sufficient notice of such appeal to the prosecutor; the determination of the sessions to be final; the justices there to allow reasonable costs to either party, to be levied and paid in such manner as is usual in other cases of appeal from orders of justices to the general quarter sessions.

§ VIII. Concerning Tenters, and the Stretching of Cloth.

[Stat. 43 *El. c.* 10. is repealed by 49 *Geo.* 3. *c.* 109.]

22 C. 2. c. 5. Stealing off tenters. By stat. 22 *C.* 2. *c.* 5. § 3. It was enacted, that if any person should feloniously cut and take, steal, or carry away, any cloth or other woollen manufactures from the rack or tenter *in the night time*, he should be guilty of felony without benefit of clergy: But

4 G. 4. c. 53. now by stat. 4 *G.* 4. *c.* 53. reciting stat. 22 *Car.* 2. *c.* 5. § 3. it is enacted, that so much of the said act as takes away the benefit of clergy from the persons convicted of the offences hereinbefore mentioned, shall be repealed, and that from and after the passing of this act (8th *July*, 1823), "every person who shall be lawfully convicted of cutting, taking, stealing, or carrying away any cloth or other woollen manufactures from the rack or tenters in the night time, shall be liable, at the discretion of the court, to be transported beyond the seas for life or for any term not less than seven years, or to be imprisoned only, or to be imprisoned and kept to hard labour in the common gaol or house or correction, for any term not exceeding seven years."

By stat. 22 *G.* 3. *c.* 40. § 4. so much of stat. 12 *G.* 1. *c.* 34. as enacts a punishment for the above offence is repealed. See stat. 4 *G.* 4. *c.* 46. § 2. *infra.*

4 G. 4. c. 46. By stat. 4 *G.* 4. *c.* 46. § 2., after reciting, that by stat. 4 *G.* 3. *c.* 37. § 16. provision was made for the capital punishment of persons convicted of divers offences in stealing, cutting, and destroying linen yarn, linen cloth, or manufactures of linen yarn, and the looms, tools, and implements used therein; and that by stat. 22 *G.* 3. *c.* 40. § 1, 2, 3. provision was made for the capital punishment of persons convicted of divers offences in destroying the woollen, silk, linen, and cotton manufactures, and the tools, tackle, and utensils used therein; and whereas it is expedient to provide a lesser degree of punishment for such offences, and to amend some defects in the said two acts, and to incorporate therewith the provision made by stat. 28 *G.* 3. *c.* 55. § 4. for the punishment of persons convicted of divers offences in cutting and destroying framework knitted pieces, stockings, and other like articles, and breaking, destroying, and damaging frames, machines, engines, tools, instruments, and utensils used in the same manufacture, and machinery in the said act mentioned, it is enacted, that from and after the passing of this act (4 *July* 1823) the whole of stat. 22 *G.* 3. *c.* 40. except so much thereof as repeals former acts, and so much of stats. 4 *G.* 3. *c.* 37., and 28 *G.* 3. *c.* 55. as create felonies in

stealing, damaging, or destroying manufactures, implements, or machinery, shall be and are hereby repealed, save only as to offences committed before the passing of this act (4 *July* 1823), as to which the said three last recited acts shall continue in force; and that from and after the passing of this act if any person shall by day or by night break into any house, shop, or building, or enter by force into any house, shop, or building with intent to cut, break, destroy, or damage in the loom or frame, or on any machine or engine, or on the rack or tenters, or in any stage, process or progress of manufacture, any woollen, silk, linen, or cotton goods, or any goods of any one or more of those materials mixed with each other, or mixed with any other material; or to cut, break, destroy, or damage any other article of the woollen, silk, linen, or cotton manufactures in the loom or frame, or on any machine or engine, or on the rack or tenters, or in any stage, process or progress of manufacture; or to cut, break, destroy, or damage any warp or shute of woollen, silk, linen, or cotton, or of any one or more of those materials mixed with each other, or mixed with any other material, or any framework knitted piece, stocking, hose, or lace; or to burn, break, cut, destroy, or damage any loom, frame, machine, engine, rack, tool, tackle, utensil, instrument, or implement, whether fixed or moveable, prepared for or employed in carding, spinning, throwing, weaving, fulling, shearing, or otherwise manufacturing, or preparing any such goods or articles; or shall wilfully and maliciously, and without lawful authority, cut, break, destroy, or damage any such woollen, silk, linen, cotton, or mixed goods, or articles, in the loom or frame, or on any machine or engine, or on the rack or tenters, or in any stage, process or progress of manufacture; or burn, break, cut, destroy, or damage any such loom, frame, machine, engine, rack, tool, tackle, utensil, instrument, or implement as aforesaid; or counsel, procure, aid, or abet, the commission of the said offences, or of any of them; every person so offending being thereof lawfully convicted shall be guilty of felony, and shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned only, or to be imprisoned and kept to hard labour in the common gaol or house of correction, for any term not exceeding seven years.

4 G.4. c.46.

Destroying woollen goods, &c. in the loom, &c.

Transportation or imprisonment.

But because it is often difficult to prove the owner's property in the cloth, therefore by stat. 15 *G.* 2. *c.* 27. § 1. it is enacted that if any cloth or woollen goods on the rack or tenters, or any woollen yarn, or wool left out to dry, shall be stolen or taken away *in the night*, any justice on complaint made in ten days after by the owner, may issue his warrant to any peace officer in the day time to enter into and search the houses, out-houses, yards, gardens, or other places belonging to the houses of every person whom such owner shall upon his oath declare to such justice he suspects to have stolen, taken away, or received the same; and if the officer shall find any such cloth, woollen goods or wool, which from the information of the person making such oath he shall have reason to suspect to have been so stolen, &c., he shall apprehend the person in whose custody or possession the same shall be found, and carry him before some justice of the same county, &c.; and if he shall not give a satisfactory account how he

15 G.2. c.27.

Search for cloth stolen off tenters and wool, &c. left to dry.

15 G.2. c.27. Woollen goods found, to be accounted for before a justice. came by the same, or in a convenient time, to be set by the justice, produce the party of whom he had the same, or some other credible witness to depose on oath his property or right to the possession thereof, he shall be convicted of stealing or taking away the same; and shall for the first offence forfeit to the owner treble value, and in default of payment thereof in the time appointed by such justice, he shall issue his warrant to levy the same by distress and sale returning the overplus if any; and in Imprisonment. default of distress, shall commit him to the common gaol where he shall be apprehended for three months, or till he shall pay Second offence. the same; for the second offence treble value, and six months' Third offence. imprisonment; for the third offence, such justice shall commit him to the common gaol till the assizes, and if he shall be there convicted, he shall be adjudged guilty of felony, and transported for seven years. § 2. But persons aggrieved (except on the third conviction) may appeal to the next general quarter sessions, whose order therein shall be final. But nevertheless, this shall not alter any former law in force, for the punishment of any persons stealing or receiving such cloth or goods, except where the proof is laid on the offender.

§ IX. Concerning the Dressing of Cloth.

3 H.7. c.11. Exportation. By stat. 3 *H.* 7. *c.*11. No woollen cloth shall be exported till it be barbed, rowed, and shorn, on pain of forfeiting the same, half to the king, and half to him that will sue.

§ X. Concerning mixed or medley Broad Cloth in particular: especially in Gloucestershire, Wiltshire, and Somersetshire.

Stats. 13 *R.* 2. *st.* 1. *c.*11., 5 & 6 *Edw.* 6. *c.* 6., 2 & 3 *Ph.* & *M.* *c.*11. & 12., 4 & 5 *Ph.* & *M.* *c.*5., 43 *El.* *c.* 10., 4 *Jac.* 1. *c.* 2., 21 *Jac.* 1. *c.* 18., 10 *Ann.* *c.*16., 1 *G.* 1. *st.* 2. *c.* 15., 13 *G.* 1. *c.* 23. § 10.—14., and 5 *G.* 3. *c.* 51. § 23. are repealed by stat. 49 *G.* 3. *c.*109. and by the same stat., also stat. 5 *El.* *c.* 4. § 31. (*a*) so far as relates to apprentices.

§ XI. Concerning the Yorkshire Manufacture in particular.

11 G.2. c.28. Narrow woollen cloth. By stat. 11 *G.* 2. *c.* 28 § 3, 4. The justices at the *Easter* sessions yearly, for the *West Riding* of the county of *York*, shall appoint searchers, such as have served apprenticeships to the trade of making narrow cloth, or have exercised such trade three years, and appoint them salaries; who shall be sworn before a justice well and truly to execute the office of searching such narrow woollen cloth. And in case of the death or sickness, or other disability of a searcher, one justice living near may appoint

(*a*) As to apprentices to woollen manufacturers, see *post.* this title. § XIV.

another till the next sessions, to be there confirmed, or another appointed. 11 G. 2. c. 28.

§ 13. Which said cloth may be made of what length and breadth the maker shall think fit.

§ 1, 2. He shall weave or set in the head of every piece of narrow woollen cloth the first letters of his name, on pain, on conviction in one month, of forfeiting 20*s*.

§ 1. The same shall be measured when wet at the mill, both by the millman and the searcher, who shall measure it down the middle for the length, and within the lists for the breadth.

The millman shall rivet at one end a seal of lead, to be furnished by the clothier, and shall stamp his own name thereon at length, and the length and breadth in figures: the searcher shall also affix a seal of lead at the other end with his name, with the length and breadth in like manner.

§ 1, 2. And they both shall keep books, wherein they shall enter the day and year when milled, the name and place of abode of the owner, and the length and breadth; and shall suffer the buyer to inspect the same.

§ 2. 11. The miller or searcher offending herein, shall, on conviction in eight days after the cloth is removed from the mill, forfeit 5*l*.

§ 7. If any person shall take off, alter, obliterate, counterfeit, or cut off the seal or figures or letters, before it be sold or cut by the retailer, he shall (on conviction in one month) forfeit 40*s*.

§ 8, 9. A sum not exceeding 3*d*. for every such narrow cloth (to be ascertained by the justices at their *Easter* sessions) shall be paid by the owner before it is carried to the mill, to such persons as the justices at *Easter* sessions shall appoint, to pay the searchers' salaries, and other expences of the act: and the millman or owner or occupier of the fulling mill, or the searcher, or such other person so appointed may detain the cloth at the mill till paid; and if not paid in eight days after demand, the person appointed to receive the money may sell the same and detain the money, rendering the overplus on demand.

§ 5. 11. And the maker or owner shall measure the cloth when brought from the mill before it is set on the tenter; and if it is less than the stamp, or by lying wet in an improper season for drying, is become less, he shall carry it to the millman and searcher to be re-measured and re-stamped, on pain of 5*s*. on conviction in one month after the offence.

§ 6. The maker or owner may stretch the same one inch in a yard in length, and two inches in every three quarters in breadth, and so in proportion: but if any maker, buyer, owner, dresser, or dealer in such cloth, stretch it further, he shall forfeit for the first half-yard in length, or first inch in breadth so overstretched, 10*s*.; and for every other half yard in length, or half inch in breadth, 20*s*.

§ 10. The conviction to be before one justice, not being a dealer in cloth, or buying or selling the same, on oath of one witness, reasonable notice being first given to the person accused. **Conviction before one justice.**

§ 10. The forfeitures (if not paid in ten days after conviction, notice thereof being given at the offender's last place of abode **Distress, where forfeiture not**

11 G.2. c.28. or dwelling-house, and if he shall not appeal) to be levied by the constable where the offender inhabits, by warrant of a justice, not being a dealer in woollen cloth, by distress, rendering the overplus on demand, charges of distress and sale being first deducted; to be distributed (after deducting the charges of conviction,) half to the informer and half to the treasurer for the expences of carrying the act into execution; for want of distress, to be committed to the house of correction to hard labour for one month.

paid in ten days.

Distribution.

Appeal. § 12. Persons aggrieved by any order or warrant upon any conviction by any justice or justices, may appeal to the next quarter sessions to be held after 14 days from the conviction, giving 10 days' notice to the informer. And the justices there may, on confirming or disannulling the orders or proceedings of the justice or justices, award costs.

5 G.3. c.51. 6 G.3. c.23. By stat. 5 *G.* 3. *c.* 51. (which extends to all woollen cloth made in the said *West Riding*, except such narrows as are provided for by the aforesaid act of 11 *G.* 2. *c.*28.) and by stat. 6 *G.* 3. *c.*23. (which extends to all such woollen cloths, except as before excepted, and except such woollen goods as are made for blanketing, and striped duffeled blankets), it is enacted as follows:

Searchers. By stats. 5 *G.* 3. *c.* 51. § 2., 6 *G.* 3. *c.* 23. § 1. 18. The justices for the said *West Riding* (not being dealers in woollen cloth, nor occupiers of any fulling mill), shall, at the *Bradford* midsummer sessions yearly appoint so many men as they shall think proper (having been brought up in the manufacture of woollen cloth in the said riding, and under 60 years of age), to be *searchers* and measurers of cloth at the fulling mills, and allow them salaries.

5 G.3. c 51. Inspectors. And by stat. 5 *G.* 3. *c.*51. § 7. They shall also appoint *inspectors* (not exceeding 12 in number) of broad woollen cloths, and of the workshops, tenter-grounds, and warehouses; with salaries, not less than 20*l.* a year.

Supervisors. And also *supervisors* (not exceeding four in number) of the conduct and behaviour both of the searchers and inspectors; with salaries, not less than 40*l.* a year, and 10*l.* more, if their duty require them to keep a horse.

All of them, before they enter upon their office, to be sworn before a justice, that they will well and truly to the best of their skill and power execute such office.

6 G.3. c.23. And by stat. 6 *G.* 3. *c.* 23. § 9. Shall also give bond to the treasurer with a surety in the penalty of 50*l.*, duly to account for and pay the money by them respectively to be received in the execution of their office.

§ 17. Provided always, that if any of the officers so appointed shall keep a public house for selling ale, beer, or other liquors, or be concerned in the making, buying, or selling any wool, woollen manufactures, or goods commonly made use of in dying; or be guilty of any misbehaviour or neglect of duty in his office; and shall be convicted thereof by the oath of one witness before two justices; it shall be lawful for the justices at the next sessions, after such conviction, on producing the same or due proof thereof, to discharge such officer, and appoint another in his room.

5 G.3. c.51. And by stat. 5 *G.* 3. *c.* 51. § 10. If any of the said officers shall

die, or be displaced, or become incapable by sickness or other accident within the year, one justice near the place may appoint another till next *Easter* sessions, to be there confirmed or another put in his place, or during such sickness or incapacity. 5 G. 3. c. 51.

§ 18. The maker of cloth shall weave or sew into the head of every piece by him made, his name and place of abode, either in distinct letters or words, or in some common or known abbreviations. See stat. 6 *G*. 3. *c*. 23. § 13.

§ 19. At the fulling mill for every yard of cloth exceeding 58 yards, whether in one cloth or two short cloths or ends, which shall be milled in one stock at one time, the owner shall pay to the miller a halfpenny for every yard above 58, over and above the usual price for milling a stockful of 58 yards.

§ 20. And all disputes between clothiers and millers, relating to the wages for fulling, milling, or scouring shall, if such miller desire it, and the matter in dispute do not exceed 40*s*., be determined by one justice (not being a trader or dealer in woollen manufacture, farmer, or occupier of a fulling mill,) who may, on complaint, summon the parties, adjudge damages, and give costs not exceeding 10*s*. and levy the same by distress if not paid in ten days. **Disputes to be determined by one justice.**

§ 3. The searchers shall at the fulling mills measure the cloths and ends or half ends there milled within six and not sooner than four hours after the same shall have been streamed or washed in the goit or mill stream; and if the same shall not be streamed or washed, then within four hours after they come out of the stock.

§ 3. Such searcher shall, on one end of every such cloth, before it be carried from the mill, affix and rivet a seal of lead to be furnished by the maker, and stamp in words and figures upon every such rivet, his name, and the name of the mill where he is stationed; and upon the residue of the seal the length and breadth of such cloth, together with the number of each of such cloths milled at such mill successively, beginning at number 1, at the 25th of *March* yearly, and so continuing progressively to the 25th of *March* next following. See also stat. 6 *G*. 3. *c*. 23. § 2.

§ 3. And shall enter in a book, to be provided by the treasurer of the said riding, the name and place of abode of the maker, the colour or sort of the cloth, and the length, breadth, and number on the seal.

§ 3. And shall give once a month, to the supervisor within the district, an account of all the cloths milled, measured, and stamped at such mill.

§ 3. The owner shall pay to the searcher, for the seal of every whole cloth 35 yards long or upwards, 6*d*.; for every end or half cloth less than 35 yards, and more than 30, 4*d*.; less than 30 yards, 3*d*. Which sum shall be accounted for by such searcher to the said treasurer.

§ 4. Searcher making default in measuring and stamping, or giving in a false or fraudulent account, shall, for the first offence, forfeit 20*s*.; for the second offence he shall forfeit his office.

§ 5. If the maker shall take away his cloth before it is measured and stamped within the times before mentioned; or before the

5 G. 3. c. 51. money be paid for stamping the same; or shall take away his cloth after nine o'clock in the evening, or before five in the morning, unless the same be measured and stamped; he shall forfeit 20*s*.

6 G. 3. c. 23. And by stat. 6 *G.* 3. *c.* 23. § 7, 8. If any inspector hath reason to suspect that any cloth shall be in the possession of any merchant, buyer, dresser, or cloth-worker, which hath not been truly stamped at the fulling-mill, he may give notice thereof to such person; describing the cloth by the maker's name or seal; which said person shall give two hours' notice to the said inspector of the time when he intends to put the said cloth into water, in order that he may attend the wetting and measuring thereof; and if such person shall put the same into water without such notice to the said inspector, he shall forfeit 20*s*. And if any supervisor or inspector shall wilfully refuse or neglect to attend for measuring and stamping any cloth or end of cloth as aforesaid for two hours after notice given to him, he shall forfeit 20*s*.

5 G. 3. c. 51. By stat. 5 *G.* 3. *c.* 51. § 6. The maker of cloth called broad cloth shall, after it is brought from the mill, and before it is put upon the tenter, measure the same, and affix and rivet a seal of lead upon the other end, and stamp thereon the length and breadth.

§ 22. The owner of every tenter shall measure the said tenter, and mark in figures the true length of yards (at 37 inches to the yard), beginning at number one, and marking every yard distinctly on the top bar on the foreside; on pain of 5*l*.

6 G. 3. c. 23. By stat. 6 *G.* 3. *c.* 23. § 15. If any person shall stretch any cloth more than one yard (consisting of 37 inches) in every 20 in the length, or more than one inch in 12 in the breadth, beyond the mark stamped by the searcher, inspector, or supervisor, who last measured the same; he shall forfeit for the first half-yard overstretched in length, 5*s*.; and for every quarter of a yard above such half-yard, 10*s*.; and for the first inch overstretched in breadth, 5*s*.; and for every inch above the first, 10*s*.

Taking off seals, &c. § 11. If any person shall willingly take off, alter, or counterfeit, deface, obliterate, or cut out any seal affixed on the said cloth as aforesaid, or the figures, letters, and words thereon stamped, or therein woven or sewed, before the cloth shall be put in papers for the press, or into the frizing-mill; or if any inspector or supervisor shall find any cloth without such seal as aforesaid, or find such seal defaced, counterfeited, or altered (unless accidentally lost, or maliciously taken off); or shall find any cloth which shall appear by the mark, stamp, or seal affixed thereon to be overstretched, or the loom-mark specifying the name and place of abode of the maker to be cut out or altered; every person so offending, or the merchant, dresser, clothier, or owner, in whose custody such cloth shall be found, shall forfeit not exceeding

Penalty. 40*s*. nor less than 20*s*.

[By stat. 49 *G.* 3. *c.* 109. § 2. the 5 *G.* 3. *c.* 51. § 23. is repealed.]

§ 16. It shall be lawful for any person, in the striking or plaining of cloth upon the tenters only, to use cards of wire, called fine hatters' cards, for the better laying the wool, and manufacturing the cloth, without being subject to the penalty.

5 G. 3. c. 51. By stat. 5 *G.* 3. *c.* 51. § 11. The inspector or supervisor may, in

the day-time, enter into any shops, out-houses, tenter-grounds, or warehouses to search; and any person resisting or refusing to permit the same, shall forfeit 10*l*. 5 G.3. c.51.

§ 8. The supervisors shall be daily employed in visiting the mills, tenters, tenter-grounds, work-shops, and places within their districts, and every such supervisor shall measure and stamp with a seal of lead having his name impressed on so many of the said cloths as he conveniently can; and keep an account thereof; and transmit the same, together with the accounts received by him from the searchers, to the justices at every quarter sessions. And if any inspector or supervisor be negligent in his duty, or shall transmit a false account of the cloths measured, he shall forfeit and lose his office.

§ 9. And if the inspector or supervisor shall find any cloth, or end, or half cloth, falsely stamped by the searcher, above one inch in breadth in more than one-third part of the length thereof, or above half-a-yard in length, he shall within seven days give information thereof to a justice not being a dealer, &c.; and such searcher shall, on conviction before such justice, forfeit 10*s*. See stat. 6 *G*. 3. *c*. 23. § 3.

Stat. 6 *G*. 3. *c*. 23. § 10. Provides, that it shall not be lawful for any inspector or supervisor to enter into any house, warehouse, or out-house, of any merchant, dresser, or other dealer in cloth (unless such places shall be made use of for dressing, tentering, or keeping of wet or undressed cloth), under pretence of searching for, or examining any woollen cloth, or to search or examine any cloth, after the same shall be put up in papers for pressing, or sent to be frized, or otherwise hath been fully manufactured, or fitted for exportation or home consumption. 6 G.3. c.23.

By stat. 5 *G*.3. *c*.51. § 18. If the maker shall expose any cloth to sale without such mark as aforesaid, or without seals as before directed, he shall forfeit 20*s*. for every such piece. 5 G.3. c.51.

By stat 6 *G*. 3. *c*. 23. § 4. The buyer, if he suspect any fraud, may within 40 days after the sale and delivery of such cloth, (and before the same shall have been raised, rowed, dressed, dyed, or put in water), put the same into cold water not exceeding four hours, and after the same shall be fully wet, shall hang the same across a plain rail or horse-tree, not less than two hours, nor more than four; and then immediately cause the same to be measured by some sworn searcher, measurer, inspector, or supervisor: And if there shall be found a less quantity in length or breadth in more than one-third part of the length thereof than is mentioned on any of the seals affixed by the said searcher, inspector or supervisor who before measured the same, in such case the searcher, &c. who last measured the cloth, shall within three days after such last admeasurement, give information thereof to a justice, (not being a dealer, &c.) that the searcher, &c. who before measured and stamped the cloth, did wilfully and knowingly affix such false and fraudulent seals to the said cloth; and the searcher, or supervisor, who affixed such false seal, being convicted thereof before such justice, on the oath of such searcher, inspector, or supervisor who last measured the said cloth, or of any other credible witness, shall forfeit for the first inch in breadth, or half-yard in length, that such cloth or 6 G.3. c.23. **Merchants suspecting cloths may wet them.** **Penalties.**

5 G.3. c.23. end of cloth shall fall short, 5*s*.; and for every other inch in breadth, or half-yard in length, the further sum of 10*s*. And if such searcher, inspector, or supervisor, who last measured the cloth, shall not in three days give information as aforesaid, he shall, on conviction before such justice, forfeit 40*s*., and his office, and be disabled for ever from holding any office under *this* act.

Where false seals found, inspector, &c. to fix new seals, &c.

§ 5. Where such false seal shall be found, the searcher, inspector, or supervisor who last measured the same, shall affix and rivet a new seal, with his name on the rivet, adding the word inspector or supervisor; and on the seal the true length (accounting 37 inches to the yard in length), and the breadth between the lists, in inches. And this shall be the rule in payment, except that (in order to discourage such fraud) the buyer may retain out of the price double the value of so much as was overstamped; unless the maker shall, within three days after notice of such deficiency, take the cloth again, and repay the purchase money, together with reasonable expences.

Inspector, &c. guilty of stamping falsely.

§ 6. If the seller or buyer shall suspect that this last admeasurement is false, he may in seven days give information thereof to a justice (not being a dealer in woollen cloth): And if such searcher, inspector, or supervisor, who last measured the same, shall be convicted of having so wilfully and fraudulently offended by the oath of one witness before such justice, he shall, for the first inch in breadth, or half-yard in length falsely measured as aforesaid, forfeit 20*s*.; and if such cloth or end of cloth shall exceed or fall short more than two inches in breadth, or one yard in length of the measure so stamped by him, he shall forfeit his office, and be discharged therefrom by the justice, and for ever disabled from holding any office under this act.

Persons charged with offence, may examine cloth in merchants hands.

§ 12. Any person against whom such information shall be made by any merchant, buyer, seller, owner, or dresser of cloth, for false sealing or stamping, may within two days after notice given to him of such information, go to the house of such merchant, owner, or dresser, and request to see the cloth, and examine whether the charge against him be just, and whether any fraud hath been committed by such merchant, and owner, or dresser: And if any merchant, dresser, or buyer or owner shall refuse to permit him to see or examine such cloth (unless the same shall before that time be put in papers for dressing, or sent to be frized), the prosecution shall cease; and if such merchant or buyer shall refuse; he shall lose all benefit of deduction out of the price as aforesaid.

5 G.3. c.51. And by stat. 5 *G*.3. *c*.51. § 16. the treasurer may deduct the sums forfeited by the searchers, inspectors, and supervisors, out of their salaries.

6 G.3. c.23. Penalties how to be levied and applied.

By stat. 6 *G*. 3. *c*.23. § 19. Informations of offences (not otherwise directed) shall be made (on oath 5 *G*.3. *c*. 51.) within ten days after the offence shall be discovered; the same to be heard and determined, on the oath of one witness, before one justice (not being a dealer in woollen cloth, nor occupier of a fulling mill); notice being first given of the charge to the person charged; and the penalties, after deducting charges of the conviction, to be distributed, half to the informer and half to the treasurer of the said *West Riding;* the part belonging to the treasurer shall be

received by the justice, and by him paid to an inspector or supervisor of broad woollen cloth; and the said justice shall, within three months, send an account thereof to the said treasurer. 6 G.3. c.23.

§ 20. If any offender shall for ten days after conviction, and notice thereof given to him at his dwelling-house or last place of abode, refuse or neglect to pay any forfeiture by him incurred by reason of this or the said recited act, or shall not give notice of appeal; then, and not before, the said justice or any other such justice (on certificate of the conviction sent to him) shall issue his warrant of distress to the constable of the town or place, or bailiff of the liberty, where the offender dwells, requiring him to levy the same by distress and sale, rendering the overplus, if any, and also after paying the charges of such distress and sale, and where no sufficient distress can be had, the said justice shall commit him to the house of correction for any time not exceeding three calendar months.

Appeal.

§ 21. Persons aggrieved by any order, warrant, or determination of such justice, may appeal to the next sessions, which shall not be held within 14 days after the cause of appeal shall arise, giving ten days' notice to the party: And the sessions may, if they confirm or disannul the order, &c. allow costs to either party, to be levied and paid as usual in cases of appeal from any order of justices to the sessions.

Convictions to be returned to the sessions.

§ 22. And the justices, inspectors, and supervisors, shall return to the sessions from time to time an account in writing of all convictions that have happened within their knowledge, and of the penalties levied and made payable to the treasurer: And the inspectors and supervisors shall pay to the treasurer, within three months after receipt thereof, all sums by them received on account of such convictions. And every person neglecting or refusing to transmit such account within 20 days next after any such sessions, or to pay such sums within three calendar months after receipt thereof, shall, on conviction on the oath of one witness before two such justices, forfeit 10*l.*, to be recovered in same manner as other penalties.

Money in the treasurer's hands.

§ 24. The money in the treasurer's hands, received on account of the duties and forfeitures, shall, after paying the expences of the acts, be applied for payment of the salaries of the searchers or measurers, inspectors or supervisors, in such manner and proportion as the said justices at their midsummer sessions yearly shall appoint.

Sessions to settle rates.

§ 25. The justices, after payment of the charges of the acts, at the said midsummer sessions yearly may make order for increasing or diminishing the rates to be paid for measuring, stamping, and sealing, so as never to exceed the rates above specified.

Stat. 59 *G.* 3. *c.* cxii. respects the application of certain surplus monies paid for measuring, &c. woollen cloth in the *West Riding* of *Yorkshire.*

[N. B. This act is not given in the printed editions of the statutes.]

§ XII. Concerning the burying of the Dead in Woollen Cloth.

By stat. 54 *G.* 3. *c.* 108. stats. 30 *C.* 2. *st.* 1. *c.* 3. intituled, *An act for burying in woollen*, and 32 *C.* 2. *c.* 1. intituled, *An additional act for burying in woollen*, are repealed.

§ XIII. Against Importation of Woollen Cloth, and Encouragement of the Exportation of Woollen Manufacture.

Importation. By stats. 11 *Ed.* 3. *c.* 3., 4 *Ed.* 4. *c.* 1. § 7. No foreign woollen cloth shall be imported, on pain of forfeiture, and further punishment at the king's will.

Exportation. By stats. 11 & 12 *W.* 3. *c.* 22. Woollen manufactures shall be exported custom free.

§ XIV. Privileges granted to Woolcombers.

49 G. 3. c. 109. May set up trades. By stat. 49 *G.* 3. *c.* 109. § 5. Every person who shall have served an apprenticeship to any branch of the woollen manufacture, or is by law entitled to exercise the same, and also his wife and children, may set up and exercise such trade, or any other trade or business which they are apt and able for, in any town or place, without suit or molestation by reason of using such trade; and shall not, during the time they exercise such trade, be removable to their place of settlement, by virtue of any law now in being, relative to settlements, until they become actually chargeable. And if any such, or his wife or child, shall be prosecuted for exercising any such trade as aforesaid, on his making it appear that he has served a legal apprenticeship to the said trade, or is the wife or child of any person who has served such apprenticeship, he shall, upon the general issue pleaded, be found not guilty, and shall have double costs.

Not removeable until chargeable.

May be summoned to make oath of their settlement. By § 6, 7. Two justices, where any such person or his wife and family shall exercise such trade, may summon every such person before them, and examine him on oath concerning the place of his last legal settlement, who shall obey such summons, and make oath accordingly; and such justices shall give an attested copy of such affidavit, so made before them, to the person making the same, in order that he may produce it when required, which attested copy shall be admitted as evidence as to such settlement before the justices at any sessions; and if such person, or his wife or child, shall again be summoned to make oath as aforesaid, then, on producing such attested copy, he shall not be obliged to take any other or further oath, but shall leave a copy of such attested copy, if required.

§ 8. Provided, that this act shall not prejudice the Universities.

And by § 9. Not to extend to the city of *London*.

And by § 3. This act, which repeals so much of stat. 5 *El.* *c.* 4. as relates to apprentices to the woollen manufactures, shall not annul any contract of apprenticeship whereby any person shall have bound or shall bind himself as an apprentice in any of the occu-

pations thereof, for any period allowed by law; provided always, that such apprenticeship shall not be required as a previous qualification for exercising any branch of the woollen manufacture, either as a master or a journeyman. 49 G.3. c.109.

N.B. By § 4. of this act, it is enacted, that nothing herein shall revive any act repealed by any act or part of any act repealed hereby.

Wreck.

[3 Ed. 1. c. 4. — 17 Ed. 2. st. 1. c. 11. — 12 Ann. st. 2. c. 18. — 3 G. 1. c. 13. — 26 G. 2. c. 19. — 48 G. 3. c. 130. — 49 G. 3. c. 122. — 53 G. 3. c. 87. — 1 & 2 G. 4. c. 75. c. 76.]

Wreck, what.

WRECK of the sea, in legal understanding, is applied to such goods as after shipwreck at sea are by the sea cast upon the land; and therefore the jurisdiction thereof pertaineth not to the lord admiral, but to the common law. 2 *Inst.* 167.

Jetsam, flotsam, and ligan.

None of those goods which are called *jetsam* (from being *cast* into the sea while the ship is in danger, and which there sink and remain under water), or those called *flotsam* (from *floating* on the surface of the water), or those called *ligan* (which *lie* in the bottom of the sea, but tied to a cork or buoy, in order to be found again), are to be esteemed wreck, so long as they remain in or upon the sea, and are not cast upon the land by the sea; but if any of them are cast upon the land by the sea, they are wreck. 1 *Blac. Com.* 292.

3 Ed. 1. c. 4. Living creature escaping.

Also by stat. 3 *Ed.* 1. *c.* 4. *Where a man, a dog, or a cat, escape quick out of the ship, the ship or any thing therein shall not be adjudged a wreck.*

A man, a dog, or a cat.] Which statute being but declaratory of the common law, these three instances are only put for examples; for besides these two kinds of beasts, all other beasts, fowls, and other living things are understood, whereby the property of the goods may be known. 2 *Inst.* 167.

Goods cast on shore.

And it is now holden that not only if any live thing escape, but if proof can be made of the property of any of the goods or lading which came on shore, they shall not be forfeited as wreck. 1 *Blac. Com.* 290. As in the case of *Hamilton* v. *Davis,* 5 *Burr.* 2732. The ship was lost. The goods cast on shore were sufficiently marked, so as that the owner might be known. But the lord of the manor refused to deliver them up, insisting that they were forfeited as wreck, because no living creature had come alive from the ship to the shore. — By Ld. *Mansfield* C. J. No case hath been produced in the argument of this cause, to prove that the goods were forfeited, because no dog or cat or other animal came alive to shore. I will therefore presume that there never was any such determination; and that no case could have been determined, so contrary to the principles of law, justice, and humanity. The very idea of it is shocking. And there is no ground for such a forfeiture, upon the distinction that hath been

Hamilton v. Davis.

so much urged, between a man or other animal coming to shore *alive* or not alive. The coming to shore of a dog or a cat alive can be no better proof, than if they should come ashore dead. The escaping alive makes no sort of difference. If the owner of the animal were known, the presumption of the goods belonging to the same person would be equally strong whether the animal were living or not.—And the Court were clear and unanimous that the owner was entitled to his goods again, on his paying or tendering a reasonable salvage.

17 Ed. 2. st. 1. c. 11.

By stat 17 *Ed.* 2. *st.* 1. *c.* 11. *The king shall have wreck of the sea throughout the realm.*

To whom the wreck belongeth.

The cause whereof originally wreck was given to the crown, stood upon two main maxims of the common law.

1. That the property of all goods whatsoever must be in some person. 2. That such goods, as no subject can claim any property in, do belong to the king by his prerogative. 2 *Inst.* 167.

Seizing wreck not felony at common law.

The taking of goods whereof no one had a property at the time is not felony; and therefore he who takes away a wreck before it is seized by the person who has a right thereto is not guilty of felony, and shall only be punished by fine or the like. 1 *Haw.* *c.* 33. § 24. That is to say, he is not guilty of felony by the common law; but it is otherwise by the statutes following.

Assisting ships in distress.

To preserve ships stranded or in distress from being plundered by the country people, it is enacted by stat. 12 *Ann. st.* 2. *c.* 18. and stat. 26 *G.* 2. *c.* 19. as follows; (which act of the 12 *Ann.* is required to be read in the church four times a year, in all sea-port towns, and on the coast.)

12 Ann. st. 2. c. 18.

By stat. 12 *Ann. st.* 2. *c.* 18. § 1. The sheriffs, justices of the peace, and also all mayors, bailiffs, and other head officers of corporations and port towns near adjoining to the sea, and all constables, headboroughs, tythingmen, and officers of the customs in all such places, shall, on application to them, or any of them, by or on behalf of any commander or chief officer of any ship or vessel, in danger of being stranded or run on shore, command the constables of the several ports nearest to the sea coasts, where any such shall be in danger, to summon and call together as many men as shall be thought necessary, to the assistance and for the preservation of such ship or vessel so in distress, and their cargoes: And if there be any vessel, either man-of-war, or merchant's ship, belonging to her majesty, or any of her subjects, riding at anchor near such place where the ship is so in distress, the officers of customs and constables above mentioned, may demand of the superior officers of such ship, assistance by their boats, and such hands as they can conveniently spare, for the said service and preservation of the said ship so in distress, and on such superior officer's refusal or neglect to give such assistance, he shall forfeit 100*l.*, to be recovered by the superior officer of the said ship so in distress, with costs, in any of her majesty's courts of record.

Penalty for refusing assistance.

26 G. 2. c. 19.

By stat. 26 *G.* 2. *c.* 19. § 6. The justices of the peace, mayors, bailiffs, collector of the customs, or chief constable who shall be nearest to where any ship, goods, or effects shall be stranded or cast away, shall forthwith give public notice for a meeting to be held as soon as possible of the sheriff or his deputy, the justices of the peace, mayors, or other chief magistrates of towns corporate, coroners, and commissioners of the land tax, or any five

of them, who shall aid in the execution of this act, and that of 12 *Ann.*, and who shall employ proper persons for saving the same. 26 G.2. c.19.

§ 9. And also the deputy sheriff and the officers of excise shall be proper officers to put these acts in execution.

And by § 10. within the cinque ports, the lord warden of the cinque ports, the lieutenant of *Dover Castle*, the deputy warden of the cinque ports, the judge official, and commissary of the court of admiralty of the cinque ports, shall put the same in execution there.

§ 12. And any justice of the peace, in the absence of the high sheriff, may take sufficient power of the county.

12 Ann. st.2. c.18. Entering ship without leave; impeding the saving the ship, &c.

By stat. 12 *Ann. st.* 2. *c.* 18. § 3. If any person besides those empowered by the said officer or his deputy, and the constables, shall enter or endeavour to enter on board any such ship so in distress, without leave of the commander, or other superior officer of the said ship, or of the said officer of customs or his deputy, or of the said constable, or some or one of them employed for the service and preservation of the said ship; or if any person shall molest him, them, or any of them, in the saving of the said ship or goods, or shall endeavour to impede or hinder the saving thereof, or when any such goods are saved, shall take out or deface the marks of any such goods, before the same shall be taken down in a book to be provided for that purpose, by the commander or ruling officer, and the first officer of the customs, such person shall within 20 days make double satisfaction to the party grieved, at the discretion of the two next justices, or in default thereof, shall by them be sent to the next house of correction, where he shall continue and be employed in hard labour for 12 months then next ensuing.

§ 3. And the commander or superior officer of the said ship in distress, or the said officer of the customs, or constables on board the same, may repel by force any such person as shall, without such leave or consent, press on board the said ship so in distress, and thereby molest them in the preservation thereof.

26 G.2. c.19. Who shall give orders in order to save a vessel.

And by stat. 26 *G.* 2. *c.* 19. § 13. To prevent confusion, or contradictory orders, the persons assembled to save any vessel or goods as aforesaid, shall conform in the first place to the orders of the master or other officers or owners, or persons employed by them; and for want of their presence or directions, then to the order of the officers of the customs, next to those of the officers of excise, then of the sheriff or his deputy, then of a justice of the peace, then of a mayor or chief magistrate, then of the coroner, then of a commissioner of the land tax, then of a chief constable, then of a petty constable or other peace officer; and any person wilfully and knowingly acting contrary to such orders, shall forfeit not exceeding 5*l.*, to be levied by warrant of one justice, and in case of non-payment, to be committed to the house of correction not exceeding three months.

§ 6. Every such sheriff, justice, mayor, coroner, lord of a manor, under-sheriff, or commissioner of the land-tax, shall have 4*s.* a-day during his attendance, out of the goods saved.

12 Ann. st.2. c.18.

By 12 *Ann. st.* 2. *c.* 18. § 2. The said collectors, and the master or commanding officer of any ship or vessel, and all others who shall act or be employed in the preserving of any such ship in

12 Ann. st.2. c.18.

distress, or their cargoes, shall within 30 days after service performed, be paid a reasonable reward for the same by the commander, master, or other superior officer, mariners or owners of the ship in distress, or by the merchant whose ship or goods shall be so saved: And in default thereof, they shall remain in custody of such officer of the customs or his deputy, until all charges shall be paid, and until he or his deputy be reasonably gratified for their said assistance and trouble, or good security given for that purpose to the satisfaction of the parties who are to receive the same: And if after such salvage they disagree with the said officer of customs or his deputy, touching the monies deserved by any of the persons so employed, the commander of such ship so saved, or the owner of the goods, or the merchant interested therein, and also the said officer of customs or his deputy, may nominate three neighbouring justices, who shall adjust the *quantum* to be paid to the several persons acting or being employed in such salvage; such adjustment shall be binding to all parties, and recoverable by action by the parties to whom allotted.

§ 2. And if no person shall appear to claim any of the goods, the chief officer of customs of the nearest port to the place where the said ship was so in distress, shall apply to three of the nearest justices, who shall put him or some other responsible person in possession of the said goods, such justices taking an account in writing of such goods, to be signed by such officer: And if they be not legally claimed within 12 months next ensuing, by the rightful owner, public sale shall be made thereof, and if perishable goods, forthwith to be sold, and after all charges deducted, the residue of the monies, with a fair account of the whole, to be transmitted to the exchequer, to remain there for the benefit of the owner when appearing, who on affidavit or other proof of his right, to the satisfaction of one of the barons of the coife, shall upon his order receive the same out of the exchequer.

26 G.2. c.19. Salvage.

By 26 G. 2. *c.*19. § 5. If any persons, not employed by the masters, mariners, or owners, or other persons lawfully authorised, shall, in the absence of persons so employed, save any vessel or goods, and cause them to be carried for the benefit of the owners into port, or any adjoining custom-house, or other place of safe custody, immediately giving notice thereof to a justice, magistrate, custom-house or excise officer, they shall be entitled to a reasonable reward for the same, to be adjusted by three neighbouring justices, which may be recovered by action at law (as in 12 *Ann.*); or the same may be adjusted by the officers above-mentioned. And by § 7., if the said salvage (and the charges of 4*s.* a-day, as above mentioned) shall not be paid in 40 days after the services performed, the officer of the customs concerned in the salvage may borrow or raise so much money as shall pay the same upon the bill or bills of sale, under his hand and seal, of the vessel or cargo, or part thereof; redeemable nevertheless on payment of the principal and interest at 4 *per cent.*

Assaulting magistrates, &c. in the salvage of vessels, &c.

§ 11. If any person lawfully authorised shall be assaulted, beaten, and wounded, for or on account of the exercise of his duty in the salvage of any vessel in distress, or of any vessel, goods, or effects, stranded, wrecked, or cast on shore, or lying under water, the of-

[o]ffender on conviction by indictment at the assizes or sessions, [sh]all be transported for seven years. 26 G.2. c.19.

§ 1. If any person shall plunder, steal, take away, or destroy any [go]ods or merchandises, or other effects, from or belonging to such [sh]ip in distress, or which shall be wrecked, lost, stranded, or cast [o]n shore (whether any living creature be on board or not), or any [of] the furniture, tackle, provisions or part of such ship; or shall [b]eat or wound with intent to kill or destroy, or shall otherwise wilfully obstruct the escape of any person endeavouring to save his [l]ife from such ship or the wreck thereof, or shall put out any false [l]ight with intent to bring any vessel into danger, he shall be guilty [o]f felony without benefit of clergy. Persons convicted of plundering shipwrecked goods, &c.

§ 2. Provided, that when goods of small value shall be stranded, [l]ost, or cast on shore, or stolen without circumstances of cruelty, [o]utrage, or violence, the offender may be prosecuted for petit larceny only, and shall suffer as in cases of petit larceny. *See* 2 *East's P. C.* 648. Goods of small value purloined.

By stats. 1 & 2 *G.* 4. *c.*75., intituled, *An act to continue and [a]mend certain acts for preventing frauds and depredations committed on merchants, shipowners, and underwriters, by boatmen and others; and also for remedying certain defects relative to the adjustment of salvage in* England, *under an act made in the twelfth year of queen* Anne. 1 & 2 G. 4. c.75.

§ 1. After reciting stat. 49 *G.* 3. *c.*122., intituled *An act for preventing frauds and depredations on merchants, ship owners, and underwriters, by boatmen and others; and also for remedying certain defects relative to the adjustment of salvage in* England, *under an act made in the twelfth year of queen* Anne; which act was to continue in force for seven years, and from thence to the end of the next session of parliament: and that by an act passed in 53 *G.* 3. (*viz. c.*87.) the said recited act (except so far as the same was altered and extended), was further continued for seven years, &c.; and it is fit and expedient that the said recited acts should be further continued, except so far as the same are altered by this act; it is enacted, that all pilots, boatmen, hovellers, or other persons, who shall take up any anchors, cables, tackle, apparel, furniture, stores, or materials, or any goods or merchandise which may have been parted with, cut from, or left by any ship or vessel within any harbours, rivers, or bays, or on any of the coasts of this kingdom, whether the same ship or vessel shall be or shall have been in distress or otherwise, and which shall have been weighed, swept for, or taken possession of by any such boatman, pilot, hoveller, or other person, shall send a report in writing of the articles so found, and stating the marks, if any, thereon, and also an accurate and particular description of the bearings, distances, and situations, and time when and where the same were so found, to a deputy vice admiral or his agent, at or near to the port or place where such boatman, pilot, hoveller, or other person shall first arrive with such articles, within 48 hours after his arrival at such port, or before he shall leave the port, if he shall quit it before that time shall expire; and shall also, within such period as aforesaid, deliver such articles so found, into a proper warehouse, or such other place as the vice admiral of each county shall appoint for safe custody, until the same shall be claimed by the owner or owners thereof, or his or their agent, and the salvage, together

53 G.3. c.87.

Pilots and others to deposit anchors, cables, and other ships' materials, taken possession of by them, in the places to be appointed by this act.

1 & 2 G. 4. c. 75.

with such other charges and expences as are hereinafter directed to be paid in respect of such articles, paid by him or them, or security given for the payment thereof, to the satisfaction of the salvor or salvors thereof; and every such pilot, boatman, hoveller, or other person, who shall wilfully and fraudulently keep possession of, or retain, or conceal, or secrete any anchors or cables, tackle, apparel, furniture, stores, or materials, or any goods or merchandize, or deface, take out, or obliterate the marks and numbers thereon, or alter the same in any manner, with intent thereby directly or indirectly to prevent the discovery and identification of such articles so found, weighed, swept for, or taken possession of as aforesaid, and shall not report and deliver the same at some proper warehouse or other place in the manner aforesaid, and within the time hereinbefore limited, shall forfeit all claim to salvage, and shall, on conviction, be adjudged guilty of receiving goods, knowing them to have been stolen, and shall suffer the like punishment as if the same had been stolen on shore. See a similar provision, stat. 49 *G.* 3. *c.* 122. § 1.

Concealing such articles forfeits claim to salvage and subjects the offender to punishment.

§ 2. Every deputy vice admiral or his agent, to whom any such report shall be sent, shall within two days forward the same, or a true copy thereof, to the secretary of the corporation of the Trinity House of *Deptford Strond* in *London*, and the same shall be placed by the said secretary in some conspicuous situation, for the inspection of all persons choosing to inspect and examine the same: Provided that no report shall be forwarded by such deputy vice admiral or his agent to the said corporation of the Trinity House of *Deptford Strond*, until the articles so to be deposited as aforesaid, shall amount in value to the sum of 20*l*. See stat. 49 *G.* 3. *c.* 122. § 2, 3. *S. P.*

Deputy vice-admiral to send report of goods deposited to the Trinity House. No report made until the articles amount to 20*l*.

§ 3. It shall be lawful for any deputy vice admiral or his agent, to seize and detain any such articles as shall not have been reported, and upon such seizure shall deposit the same in the warehouse or other place to be appointed as aforesaid, and shall within two days thereafter send a report in writing of the articles seized, and stating the marks (if any) thereon, to the said corporation of the Trinity House as before directed, to be made public as aforesaid; and every such deputy vice admiral or his agent, so seizing, who shall not make such report within two days after seizure, shall, on conviction before any justice of the peace or magistrate, upon the oath of one credible witness, or on the confession of the party offending, forfeit the sum of 20*l*. for every such neglect, together with double the value of the goods so seized, one half of which penalty shall be paid to the informer, and the other half to the poor of the parish or township where such offence shall be committed; and every deputy vice admiral or his agent, who shall make any such seizure, without any previous information being given to such deputy vice admiral or his agent, shall, on the same articles being claimed by and delivered to the owner thereof, or his or her agent, be entitled to receive such sum of money as shall be equal to one third part of the value thereof, after the payment of the duties, and charges incidental to the recovery and preservation of the same. See stat. 49 *G.* 3. *c.* 122. § 4. *S. P.*

Deputy vice-admiral may seize goods not reported and deposited, and shall make report thereof to the Trinity House, on penalty of 20*l*. and double value of the seizure.

One-third of value of goods allowed on being claimed by the owner.

§ 4. If the owner and deputy vice admiral or agent so seizing, cannot agree on the value of the articles, such value shall be ascertained in like manner as is hereinafter directed with regard to sal-

Mode of ascertaining the value of articles seized.

vage, or be referred to the decision of the high court of admiralty. See stat. 49 G. 3. c. 122. § 5. S. P. 1 & 2 G 4. c 75.

If deputy vice-admiral seize by previous information, he and informer to divide 2-6th parts.

§ 5. If any such seizure shall have been made in consequence of any information given to any such deputy vice admiral or his agent, the deputy vice admiral or his agent so seizing shall only be entitled to receive from the owners or their agents of the articles one sixth part of the value thereof, and one other one sixth of such value shall be paid to the person who shall have given the information, the value of such articles to be ascertained in manner aforesaid. See stat. 49 G. 3. c. 122. § 6. S. P.

If articles not claimed within a limited time, to be sold according to 12 Ann. c. 18. and if they shall have been seized, the deputy vice-admiral seizing and the person informing shall be equally entitled to salvage.

§ 6. If any such articles, so reported and delivered into the warehouse or other place as aforesaid, shall not be claimed within a year and a day after such report shall have been transmitted to the said corporation of the Trinity House as before mentioned, the same shall be sold, and a certificate of such sale shall be delivered to the purchaser thereof, under the directions of the high court of admiralty, and the monies arising from the sale be applied in the manner directed in and by stat. 12 *Ann.* c. 18.; and if the same shall have been seized by the deputy vice admiral or his agent, then the deputy vice admiral or agent so seizing, and the person who shall have given such information as shall have led to the seizure (if any such information shall have been given), shall be equally entitled to the salvage which shall be allowed by the high court of admiralty to the salvors in the case of unclaimed property. See stat. 49 G. 3. c. 122. § 7. S. P.

If the owners and salvors cannot agree respecting the salvage, three justices shall determine the difference.

§ 7. If the salvors of any such articles, &c., so found, &c., and so lodged and reported, and the owners thereof, or their agent, cannot agree respecting the amount of salvage, or the value, then the matter in difference shall be determined by any *three* justices of the peace residing near to the place where such articles or goods shall be deposited, who shall begin to proceed in their inquiry, as to such matters in dispute, within 48 hours after such difference shall be referred to them; and if they cannot agree respecting the same, then it shall be lawful for them to nominate any third person conversant in maritime affairs, at their option, who shall ascertain the amount of the salvage to be paid, or the value thereof, within 48 hours after he shall have been so nominated: and the said justices, and such third person so nominated, shall have full power to examine the parties, or their witnesses, upon oath, which oath they are hereby authorized to administer. See stat. 49 G. 3. c. 122. § 8. S. P.

If the justices cannot agree, they shall nominate a person conversant in maritime affairs, who shall determine.

Justices may in like manner, determine upon remuneration to be made for services rendered to ships in distress or otherwise.

§ 8. It shall also be lawful for the said justices to decide, in the like manner, and within the same time, on all claims and demands whatsoever, which shall be made by pilots, boatmen, and other persons, for service of any description (except pilotage) to be rendered by them to any ship or vessel, as well for carrying off from the shore to such ship or vessel any anchors, cables, or other stores, from any port of the coast of *England* and *Wales*, and *Berwick-upon-Tweed*, or for the saving and preserving any goods or merchandize which may have been wrecked, stranded, or cast away from any ship or vessel, or for being instrumental in saving the life or lives of any person or persons on board, the master, owner or owners, or his, or their agent or agents, being present with such justices; and the said justices shall have full power to hear and determine on all cases whatever, of services rendered by

1&2 G.4. c.75. pilots, boatmen, and others, to ships or vessels (except pilotage), whether such ships or vessels shall at the time be in distress or not, and they shall have the like power of examining the parties or their witnesses upon oath; and the decision of such justices shall be final on all parties, except in such cases in which an appeal shall be interposed by either party to the high court of admiralty, such appeal to be interposed within 30 days after the award. See stat. 49 G. 3. c 122. § 9. S. P.

Decision of justices final, unless an appeal to court of Admiralty.

§ 9. In case the party or parties so claiming to be entitled to salvage, or the party or parties who is or are to pay the same, or their agents, shall be dissatisfied with such award, it shall be lawful for either of them, within ten days after such award is made, but not afterwards, to declare to the justices, or person nominated by them, his or their desire of obtaining the judgment of the high court of admiralty respecting the said salvage, and thereupon he or they shall proceed, by taking out a monition within 30 days from the date of the award; but in such case the said justices are hereby required to deliver to the owners, or their agents, any such articles, respecting which any claim for salvage shall be made upon the owners, or their agent, giving sufficient bail in the amount of the sum awarded for salvage or compensation, to be taken by a commissioner for taking examinations in prize cases, if there shall be one in the port; but if there shall be no such commissioner there, then the said justices, or any other of H. M.'s justices of the peace, are and is hereby authorized to take the same; and the commissioner or justice who shall take such bail, shall certify the same according to the form contained in the schedule hereunto annexed, and transmit the same without delay to the high court of admiralty, together with a true certificate in writing, of the gross value of the whole of the articles, and also a copy of such proceedings and awards, on unstamped paper, certified under the hand of such commissioner or justice taking the bail; and the same shall be admitted by such court as evidence. See stat. 49 G. 3. c. 122. § 10. S. P.

Persons dissatisfied may appeal to the high court of admiralty; but the goods to be restored to the owners on giving bail.

Bail to be taken by a commissioner in prize cases, if there is one in the place, otherwise by a justice.

§ 10. It shall be lawful for the person so to be named by the said justices, who shall decide on the amount of salvage to be paid, or on the value of the articles, or on the remuneration to be made to persons rendering assistance to ships or vessels, or persons as aforesaid, to demand and receive from the owner or owners of the articles saved, or of the ships or vessels in behalf of which the services may have been rendered, or his or their agents, a sum not exceeding 2*l.* 2*s.*, and such owner or owners, or his or their agents, shall pay to the person so to be nominated by the said justices, such fee or reward, immediately after he shall have made his award or decision, and on delivery of the same. See stat. 49 G. 3. c. 122. § 11. S. P.

Persons named by justices to decide on the amount of salvage, &c. may demand from the owner 2*l.* 2*s.*

§ 11. "If any person or persons shall wilfully cut away, cast adrift, remove, alter, deface, sink or destroy, or shall do or commit any act with intent and design to cut away, cast adrift, remove, alter, deface, sink or destroy, or in any other way injure or conceal, any buoy, buoy rope, or mark belonging to any ship or vessel, or which may be attached to any anchor or cable, belonging to any ship or vessel whatever, whether in distress or otherwise, such person or persons so offending shall, on being convicted of such offence, be deemed and adjudged to be guilty of

Persons cutting away or defacing buoy ropes, &c. to be deemed guilty of felony, &c.

felony, and shall be liable to be transported for any term not exceeding seven years, or in mitigation of such punishment to be imprisoned for any number of years, at the discretion of the court in which the conviction shall be made." Stat. 49 *G.*3. *c.*122. § 12. *S. P.* — 1 & 2 G. 4. c. 75.

§ 12. "If any person shall knowingly and wilfully, and with intent to defraud and injure the true owner or owners thereof, or any person interested therein as aforesaid, purchase or receive any anchors, cables, or goods or merchandize which may have been taken up, weighed, swept for, or taken possession of, whether the same shall have belonged to any ship or vessel in distress or otherwise, or whether the same shall have been preserved from any wreck, if the directions herein-before contained with regard to such articles shall not have been previously complied with, such person or persons shall, on conviction thereof, be deemed guilty of receiving stolen goods, knowing the same to be stolen, as if the same had been stolen on shore, and suffer the like punishment as for a misdemeanour at the common law, or be liable to be transported for seven years, at the discretion of the Court before which he, she, or they shall be tried." Stat. 49 *G.* 3. *c.* 122. § 13. *S. P.*

Persons fraudulently purchasing or receiving anchors, cables, &c. shall be considered receivers of stolen goods.

§ 13. In case the master, mate, or crew of any ship or vessel bound to parts beyond the seas, shall find and take on board any anchor, cable, or any goods or merchandize, or shall receive any anchor, cable, or any goods or merchandize on board, from any other person or persons who may have found the same, knowing the same to have been so found, the master, mate, or other person having the command of such ship or vessel, shall make a true entry in the log book of such ship, of the articles so found or taken on board, stating the marks (if any) thereon, and the bearings and distances and other minute description, and the time when and where the same were found and taken on board; and also shall, at the first possible opportunity, transmit a report in writing, containing a true copy of such entry in the log book of the said ship or vessel, to the said corporation of the Trinity House, and on the return of such vessel to any port in *England* or *Wales*, or *Berwick-upon-Tweed*, he shall deliver the same articles into the possession of a deputy vice admiral or his agent, in or nearest to such port at which he shall first arrive, and within 24 hours after his arrival, with the like report as is herein-before directed; and such deputy vice admiral or agent is hereby required to transmit such report to the said corporation of the Trinity House, to be placed by the said corporation for inspection; and if the same shall not be claimed by the owners thereof, or their agent, within a year and a day after such report shall be transmitted, the same shall be sold and disposed of according to law with regard to unclaimed property; and in default thereof, or if the master of such ship or vessel shall sell or dispose of such anchor, cable, goods, or merchandize to any person whomsoever, or shall not, upon his first return to any port within *England* and *Wales*, or *Berwick-upon-Tweed*, report and deliver the same according to the provisions of this act, he shall for every such offence forfeit all claim to salvage, and on being thereof lawfully convicted before any justice of the peace or magistrate, on the oath of one credible witness, or on the confession of the party offending, forfeit and pay any sum not

Masters of ships bound to parts beyond the seas, finding or taking on board anchors and other articles, to make entry in the log book and report the same to the Trinity House, and on their arrival in England deposit the articles.

If not claimed to be sold.

Penalty for making default not exceeding 100*l.* nor less than 50*l.*

1 & 2 G. 4. c. 75. Application of penalty.

exceeding 100*l.* nor less than 30*l.*, one half of which penalty shall be paid to the informer, and the other half to the president and governors, for the relief and support of such maimed and disabled seamen, and of the widows and children of such as shall be killed, slain, or drowned in the merchants' service, under stat. 20 *G.* 2. *c.* 38.; and shall also forfeit double the value of such articles to the owners. Stat. 49 *G.* 3. *c.* 122. § 14. *S. P.*

Fees to be paid for reports, 1*l.* 1*s.* to the deputy vice-admiral, and 1*l.* 1*s.* to the secretary of the Trinity House.

§ 14. It shall be lawful for the deputy vice-admiral or his agent, who shall make the report required by this act to the said corporation of the Trinity House, to receive from the owners of the articles in respect of which the report shall be made, or if the same are not claimed, then out of the produce of the sale thereof, the sum of 1*l.* 1*s.* for each report; and it shall also be lawful for the secretary or other proper officer of the said corporation of the Trinity House, to receive in like manner as last-mentioned, the sum of 1*l.* 1*s.* for each report received, to be made public by them as aforesaid, which last-mentioned sum shall be paid to the said deputy vice-admiral or his agent, before the delivery of the goods, and accounted for by him to the Trinity House. Stat. 49 *G.* 3. *c.* 122. § 15. *S. P.*

Punishing pilots and others selling or disposing of anchors or cables in foreign countries.

By § 15. And whereas pilots, hovellers, boatmen, and other persons in small vessels have for many years conveyed anchors and cables which may have been weighed, swept for, or taken possession of by them as aforesaid, or which they may have purchased of other persons, knowing them to have been weighed, swept for, or taken possession of, without being reported as aforesaid, to foreign countries, and there sold and disposed of, to the manifest injury and loss of the owners thereof; for remedying whereof it is enacted, "that every pilot, hoveller, boatmen, or the master of any such vessel, who shall convey any such anchor or cable to any foreign port, harbour, creek, or bay, and there sell and dispose of the same, shall be deemed and adjudged guilty of felony, and shall be transported for any term not exceeding seven years." Stat. 49 *G.* 3. *c.* 122. § 16. *S. P.*

Penalty on dealers in marine stores not having their names painted on their storehouses, or cutting up any cable without a permit from magistrate.

By § 16. All persons who shall trade or deal in buying and selling anchors, cables, sails, or old junk, old iron, or marine stores of any kind or description, shall have their names, with the words "*Dealer in Marine Stores*," painted distinctly in letters of not less than six inches in length, upon the front of all their storehouses, warehouses, and other deposits for such goods; and in default of their so doing, they shall on conviction before any justice or justices of the peace, or magistrate or magistrates of any jurisdiction where such storehouse, warehouse, and depôt shall be, upon the oath of one credible witness, or on confession of the party offending, forfeit a sum not exceeding 20*l.* nor less than 10*l.*, one half of which penalty shall be paid to the informer, and the other half to the poor of the parish or township where such offence shall be committed; and it shall not be lawful for such dealers or traders to cut up any cable, or any part of a cable, exceeding five fathoms in length, or uncant, untwine, or unlay the same into junk or paper stuff, on any pretence whatsoever, without first obtaining a permit from some justice of the peace or magistrate residing near to the residence of such dealer, which permit shall not be granted, unless an affidavit shall have been made that the cable so intended to be cut up had been *bonâ fide* purchased, and without

fraud, by the party so intending to cut up the same, and without any knowledge or suspicion on his or her part, that the same had been or were dishonestly come by; and in which affidavit shall also be specified the particular quality and description of such cable, and the name or names of the seller or sellers thereof, which affidavit shall be recited and set forth at length in the permit thereupon granted, on pain of forfeiting for the first offence any sum not exceeding 20*l.* nor less than 10*l.*; and for every second or further offence, any sum not exceeding 50*l.* nor less than 20*l.*, to be recovered before any justice of the peace; and one half thereof to go to the informer, and the other half to the poor of the parish in which such offence shall have been committed. Stat. 49 *G.* 3. *c.* 122. § 17. *S. P.*

1 & 2 G. 4. c. 75.

First offence.

Second offence.

By § 17. And for the more effectual prevention of such frauds, all dealers in such marine stores shall keep a book or books, fairly written, in which entries shall be from time to time regularly made, of all such old marine stores as shall be by them from time to time bought, containing a true account and description of the times when the same were so respectively bought by them, and of the names and places of abode of the respective sellers thereof; and before any person who shall obtain such permit for the cutting up of any such cable (as herein-before required to be obtained), shall proceed to cut up the same by virtue thereof, there shall be published, by the space of one week at least before the cutting up the same, one or more advertisement or advertisements in some public newspaper printed nearest to the storehouse, warehouse or depôt where the articles shall be deposited, notifying that such party had obtained such permit, for the purpose of cutting up such cable, and of such kind and quality as therein described, and also specifying the place where such articles shall be deposited; whereupon it shall be lawful for all and every person or persons who may have just cause to suspect that such articles are the property of such person or persons, and shall have verified upon oath the fact of such his or their suspicion before any justice of the peace or magistrate residing near to the said storehouse, warehouse, or depôt, by warrant for that purpose thereupon granted, to require of and from such dealer, who shall have so advertised, and shall be so sworn to be suspected as aforesaid, the production and examination of the book or books of entries hereby required by him or her to be kept, and inspect and examine the cables described in such permit; and in case any such dealer, when so thereunto required as aforesaid, shall neglect or refuse to produce to the person named in such warrant, as the person on whose oath the same shall have been obtained, the book or books containing the entries of such dealer so required to be made therein as aforesaid, or shall neglect to keep any such book or books in which entries, containing accounts of the several particulars hereinbefore required to be entered, shall be made, or to permit such inspection or examination as aforesaid, or shall, after obtaining such permit for the cutting up of any such cable, and before the cutting up of the same, neglect to publish such one or more advertisement or advertisements relative thereto, as is hereinbefore directed and required, the dealer or dealers so offending in all or any of the particulars hereinbefore mentioned shall forfeit and pay for every such offence, being his, her, or their first offence, any sum not exceeding 20*l.* nor less than

Dealers to keep an account of old stores bought by them;

to advertise before cutting up of cordage.

Persons may demand inspection of books.

Penalty on refusing inspection, &c.

For first offence not exceeding

1 & 2 G. 4. c. 75.

20*l.* nor less than 10*l.* For second, &c. not exceeding 50*l.* nor less than 20*l.* Recovery of penalties.

10*l.*, and for every second or further offence any sum not exceeding 50*l.* nor less than 20*l.*, one half of which penalty shall, on conviction before any justice of the peace or magistrate residing near as aforesaid, be paid to the informer, and the other half to the poor of the parish or township in which such offences shall be committed; and in case any of the penalties by this act imposed shall not be paid, with the charges incident to the conviction, immediately upon such conviction, the same shall and may be levied by warrant under the hand and seal of such justice of the peace or magistrate, upon the goods and chattels of any such offender or offenders; and in case no sufficient distress shall be found, then every such offender or offenders shall and may be committed by any justice of the peace or magistrate as aforesaid to gaol, in case of any first offence, for the space of six calendar months, and in case of any second or further offence, for the space of twelve calendar months, unless the said penalty and the charges shall be sooner paid. Stat. 49 *G.* 3. *c.* 122. § 18. *S. P.*

Manufacturers of anchors to place marks on anchors and kedge anchors.

§ 18. All manufacturers of anchors and kedge anchors, shall place his, her, or their name or names, together with a progressive number, and also the weight of the anchor, in legible characters upon the crown, and also upon the shank under the stock of each anchor, which he, she, or they shall manufacture, and shall also place his, her, or their name or names, together with a number, and also the weight of the kedge anchor upon the crown, and also upon the shank near to the stock of every kedge anchor, which he, she, or they shall manufacture; and in case any such manufacturer shall neglect to place such name, number, or weight in the manner hereinbefore directed and required, every such person or persons so offending shall, on conviction before any justice of the peace or magistrate, on the oath of one credible witness, or on the confession of the party so offending, forfeit any sum not exceeding 5*l.* nor less than 40*s.*, one half of which penalty shall be paid to the informer, and the other half to the poor of the parish or township in which such offence shall be committed. Stat. 49 *G.* 3. *c.* 122. § 19. *S. P.*

Penalty on neglect.

Not exceeding 5*l.* nor less than 40*s.*

Form of conviction.

§ 19. And for the more easy and speedy conviction of offenders against this act, every justice or justices of the peace before whom any person shall be convicted of any offence against this act, shall and may cause the conviction to be drawn up according to the following form, *videlicet*,

BE it remembered, that on the ——— *day of* ———, *in the year of our Lord* ———, A. B. *is convicted before me* [or, *us*] ——— *one* [or, *two*, as the case may be,] *of His Majesty's justices of the peace for the* ———, [here specify the offence, and the time and place when and where committed, as the case may be,] *contrary to an act passed in the second year of the reign of king* George *the fourth, intituled* [here insert the title of this act, ante, p. 669.] *Given under my hand and seal* [or, *our hands and seals,*] *the day and year first above written.*

And no certiorari, or other writ or process for the removal of any such conviction, or any proceedings thereon, into any of H. M.'s courts of record at *Westminster*, shall be allowed or granted. Stat. 49 *G.* 3. *c.* 122. § 20. *S. P.*

§ 20. It shall and may be lawful to and for any person or persons so convicted by any justice or justices of the peace before-mentioned of any offence or offences against this act, within three calendar months next after such conviction, to appeal to the justices of the peace assembled at the general quarter sessions holden for the county, city, or place where the matter of appeal shall arise, first giving ten days' notice of such appeal to the person or persons appealed against, and of the matter thereof, and entering into a recognizance before some justice of the peace for such county, city, or place, with two sufficient sureties, conditioned to try such appeal, and for abiding the determination of the court therein: and such justices at the general quarter sessions shall, upon due proof of such notice having been given and recognizance entered into, hear and determine the matter of such appeal, and may either confirm or quash and annul the said conviction, and award such costs to either party as to them shall seem just and reasonable, and the decision of the said justices therein shall be final, binding, and conclusive; and no proceeding to be had or taken in pursuance of this act shall be quashed or vacated for want of form only, or be removed by *certiorari*, or any other writ or process whatsoever, into any of H. M.'s courts of record at *Westminster* or elsewhere. Stat. 49 *G.* 3. *c.* 122. § 21. *S. P.*

1 & 2 G. 4. c. 75. Appeal from conviction to the general quarter sessions.

Power to award costs.

§ 21. The inhabitants of any parish, township, or place, shall be deemed to be competent witnesses, notwithstanding the penalty or any part thereof, may be given or applicable to the poor of such parish, township, or place, or in aid thereof. Stat. 49 *G.* 3. *c.* 122. § 22. *S. P.*

Inhabitants may be competent witnesses.

§ 22. All felonies, misdemeanors, and other offences under this act, may be laid to be committed, and shall be tried in any city or county, (being a county) where any such article, matter, or thing, in relation to which such offence shall have been committed, shall have been found in the possession of the person committing the offence; or if the same shall have been sold in foreign parts, then in the county or place in which the person selling the same shall reside. Stat. 49 *G.* 3. *c.* 122. § 23. *S. P.*

Offences may be tried in the county where articles found, or if sold in foreign parts, where offenders reside.

§ 23. Nothing in this act contained shall extend to or be in force within the limits specified in stat. 48 *G.* 3. *c.* 130., or in any manner to affect any of the provisions of the said act; also, nothing in this act contained shall extend to repeal or alter any of the clauses, powers, or provisions contained in stat. 48 *G.* 3. *c.* 104.; but the said act shall remain in full force as if this act had not been passed.

Act not to alter the statute of 48 G. 3. c. 130. Reservation of the statute of 48 G. 3. c. 104.

§ 24, 25. Also this act shall not extend to taking away, abridging, prejudicing, or impeaching, in any manner whatever, the jurisdiction of the high court of admiralty of *England*, or the jurisdiction of the admiralty court of the Cinque Ports, two ancient towns, and their members, or of the admiralty court of the borough of *Great Yarmouth*, in the county of *Norfolk*, or of the admiralty court of the borough of *Dunwich*, in the county of *Suffolk*, or of the admiralty court of the borough of *Southampton*, in the county of *Hants*, or of the admiralty court of the borough of *Southwold*, in the county of *Suffolk*, or of the admiralty court of the borough of *Lynn Regis*, in the county of *Norfolk*; nor to deprive or in any ways prejudice the rights of H. M., or any patentee or grantee of the crown, or any lord or lords, or lady or

Reservation of the rights of the high court of Admiralty, &c.

Reservation of the rights of the

1 & 2 G. 4. c. 75.

crown, and of lords and ladies of manors.

ladies, of any manor or manors whatsoever. Stat. 49 *G.* 3. *c.* 122. § 26, 27. *S. P.*

Reservation of the rights of the Trinity Houses of Kingston-upon-Hull, Newcastle-upon-Tyne, and Scarborough. Trinity House.

§ 34. Nor to the taking away, abridging, hindering, prejudicing, or impeaching of any grant, liberties, franchises, and privileges heretofore granted to and vested in the corporation of the Trinity House of *Kingston-upon-Hull*, or in the commissioners acting under the provisions of any act relating to the adjustment of salvage for anchors, cables, and other ships' materials found in the river *Humber*, or in the masters, wardens, and brethren of the Trinity Houses of *Newcastle-upon-Tyne* and *Scarborough* respectively. Stat. 49 *G.* 3. *c.* 122. § 29. *S. P.*

[*Note.* — Stat. 49 *G.* 3. *c.* 122. § 28. contains a similar saving for the Trinity House of *Deptford Strond*, which is not repeated in stat. 1 & 2 *G.* 4. *c.* 75.]

Reservation of the rights of the city of London.

By § 35. Nor to prejudice or take away any right of the mayor of the city of *London*, or of the mayor and commonalty and citizens of the city of *London*, in and upon the rivers of *Thames* and *Medway*. Stat. 49 *G.* 3. *c.* 122. § 30. *S. P.*

Scotland and Ireland.

By § 36. Nothing in this act contained shall extend to *Scotland* and *Ireland*. Stat. 49 *G.* 3. *c.* 122. § 31. *S. P.*

Lords of manors not to lay claim to wrecks till report of the same be made to the deputy vice-admiral of the coast, &c.

§ 26. No lord or lady of any manor, or other person who may be entitled to wreck of the sea, or to any goods found jetsam, flotsam, or lagan, shall be entitled to appropriate such wreck or goods to his, her, or their own use, until he, she, or they shall have caused a report thereof in writing to be given to the deputy vice-admiral of that part of the coast where the same shall have been stranded, wrecked, or found, or to his agent; or if there shall be no such deputy vice-admiral or agent residing within the distance of 50 miles, then to the corporation of the Trinity House; which report shall contain an accurate and particular description of the wreck or goods found, and of the place or places and time or times where and when the same may have been found, and of any marks that may be thereon, and of such other particulars as may the better enable the owner or owners to recover the same, and also of the place where the same are deposited and may be found and examined by any person claiming any right to such wreck or goods, nor until the full expiration of a year and a day after the delivery of such notice; and the deputy vice-admiral or agent aforesaid shall, within 48 hours after receiving such report, transmit a copy thereof to the secretary of the corporation of the Trinity House, upon pain of forfeiting for any neglect to transmit such account, the sum of 50*l.* to any person who will sue for the same; and the said secretary shall cause such account to be placed in some conspicuous situation, for the inspection of all persons claiming to inspect and examine the same: Provided that nothing herein contained shall extend to repeal or in any manner to affect any of the provisions of stat. 52 *G.* 3. *c.* 159. — Stat. 53 *G.* 3. *c.* 87. § 2. *S. P.*

Deputy vice-admiral to transmit a copy of report to the secretary of the Trinity House. Penalty, 50*l.*

Perishable goods may be sold with consent of a justice.

§ 27. When any goods which shall be found or taken possession of by any lord or lady of any manor, or person entitled to wreck of the sea, or to goods found flotsam, jetsam, or lagan, or his or her agent or servant, or by any vice-admiral, or his deputy or agent, or by any officer or other person whatsoever acting by or under the authority of this act, or of stat. 1 & 2 *G.* 4. *c.* 76. (*post*, 684.) shall be of so perishable a nature, or so much injured or damaged, that the same cannot be kept, then such goods shall, at

the request of any of the persons interested therein, or in the saving and preserving thereof, with the consent and approbation of some justice of the peace, not interested or concerned in the same, and in the presence of such justice, or of some person specially appointed by such justice, be sold by public auction or private contract, as such justice may direct by some writing under his hand, which writing shall contain an accurate account of the goods, and of the marks thereon, or other particulars, and of the times and places of the finding and sale thereof; and the money raised by such sale, after defraying the reasonable expences, to be settled by such justice, shall be deposited in the hands of the lord or lady of the manor, or other person, or deputy vice-admiral, to abide the claims of all persons, in like manner as the goods themselves would be subject if remaining unsold: Provided that all persons required to transmit reports to the deputy vice-admiral of the finding of any goods, shall, in case of any such sale, likewise transmit to such deputy vice-admiral an account of such sale, and of the proceeds thereof; and the said deputy vice-admiral shall forward such reports to the secretary of the Trinity House, within the like periods and under the like penalties for neglect, as in cases of any goods found and required to be reported under the provisions of the said recited act and this act. Stat. 53 *G.* 3. *c.* 87. § 3. *S. P.* 1&2G.4.c.75.

Money to be deposited in the hands of the lord of the manor, &c.

An account of sale to be transmitted to the deputy vice-admiral.

§ 28. It shall be lawful for the commissioners of customs and excise, and they are hereby required to permit all goods, wares, and merchandize saved from any vessels on their homeward voyage, to be forwarded to the port of their original destination; and also to permit goods, wares, and merchandize saved from any vessels stranded or wrecked on their outward voyage, to be returned to the port at which the same were shipped; but such commissioners are to take security for the due protection of the revenue in respect of such goods, &c.

Goods saved from vessels wrecked to be forwarded to the ports of their original destination.

§ 29. It shall be lawful for the deputy vice-admiral of the part of the coast where any ship or vessel shall be stranded or wrecked, or where any wreck of the sea or goods shall be cast on shore, and for his agent, and also for the owner or master of such ship or vessel, and for the owners of such goods, and for any officer of customs or excise, and other officer, and for all persons employed or acting in aid of any such deputy vice admiral, officer, master, or owner, in the saving or recovering any such ship or vessel, or the cargo, stores, tackle, or other articles, or the preserving the lives of the crew, &c. or of any wreck, to pass and repass with their horses, carts, carriages, or servants, over any lands near to the part of the sea coast where such vessel shall be so wrecked or stranded, or on which such wreck shall be cast, without interruption or obstruction by the owner or occupier thereof, for the purpose of rendering assistance in saving, recovering, and preserving any such ship or vessel, or goods or stores, or any cables, anchors, spars, masts, cordage, or other tackle or articles belonging to any ship or vessel, or for saving or otherwise assisting in preserving the lives of the crew, or of any persons on board of any such ship or vessel, or for the taking possession of and securing for the benefit of the owners thereof, of any wreck or goods, or other things cast on shore, or found on shore, or found near thereto, provided there shall be no road by which the parties may pass and repass with as

Carriages may pass over the lands near the coast where vessels are wrecked, for the preservation of the wreck, &c.

1 & 2 G. 4. c. 75.

much convenience and expedition as over such lands; and also to place any planks, timber, or any part of the wreck, or any goods or stores removed or saved from any such ship or vessel, or any other wreck or goods as aforesaid, upon any such land for a reasonable time, until they can be removed to some warehouse or safe place of deposit, making compensation to the occupier of such lands, which compensation shall be a charge upon the wreck or goods in respect whereof the damage may be done, in like manner as salvage; and in case the parties cannot agree as to the amount thereof, then the same shall be settled by *two* justices of the peace, or of a third person named by them, in such manner and within such times as the amount of salvage is directed to be settled by the said recited act of 49 *G.* 3. *c.* 122. — Stat. 53 *G.* 3. *c.* 87. § 4. *S. P.*

Compensation to the land occupiers.

If parties do not agree, two justices to settle it.

Penalty on refusing persons so employed from passing over lands, &c. 100*l.*

§ 30. If any owner or occupier of any land or premises, over which any person is authorised by this act to pass and repass, for any of the purposes in this act before mentioned, shall interrupt, impede, or hinder any such person from passing over his land or premises, with horses, carts, carriages, and servants, for the purposes before mentioned, or either of them by locking his gates, or refusing upon request to open the same, or otherwise, or shall obstruct or hinder the placing of any wreck, goods, stores, or other articles upon his land, or shall prevent their remaining there for a reasonable time, until the same can be removed, such occupier shall forfeit and pay to any person who will sue for the same, the sum 100*l.*, to be recovered by action of debt. Stat. 53 *G.* 3. *c.* 87. § 5. *S. P.*

Questions of salvage within the jurisdiction of the high court of admiralty or the courts of record at Westminster.

§ 31. And whereas questions have arisen as to the jurisdictions of the courts of record at *Westminster*, and of the high court of Admiralty, in cases of salvage of ships and goods performed between high and low water mark; it is enacted, that any question in relation to salvage of any ship or vessel, or of any goods, which shall be performed between high and low water mark, shall be, and be deemed to be within the jurisdiction or cognisance of the high court of admiralty, or of H. M.'s courts of record at *Westminster*. Stat. 53 *G.* 3. *c.* 87. § 6. *S. P.*

In case of damage done by a foreign vessel in harbour, &c. any of the judges may cause the vessel to be arrested until the owners, &c. shall undertake to appear defendant in any action.

§ 32. In every case in which any damage shall be done by any foreign ship or vessel to any *British* ship or vessel, barge, boat, or other craft, or any buoy or beacon in any harbour, port, river, or creek, and it shall appear on a summary application, made to any judge of any of H. M.'s courts of record at *Westminster*, or to the judge of the high court of admiralty, that such damage or loss has probably been sustained or arisen by the misconduct or negligence of the master or mariners, then and in such case it shall be lawful for such judge to cause such foreign ship or vessel, being in any harbour, port, river, or creek, to be arrested and detained until the master, or owner, or consignee, or some agent shall undertake to appear and be defendant in any action which may be brought for such loss or damage, and give such sufficient security, by bail or otherwise, for all costs and damages, if recovered, as shall be ordered by such judge, if it shall upon the trial of such action or suit appear that such loss or damage shall have arisen from such negligence or misconduct; and in such action or suit the person giving security shall be made defendant, and shall be stated to be the owner of the foreign ship or vessel doing such damage; and it shall not be necessary in any such action or suit to give any other

evidence of the liability of such person to such action or suit than the production of the order of the judge. Stat. 53 G. 3. c. 87. § 7. S. P.

1 & 2 G. 4. c. 75.

§ 33. All penalties and forfeitures above 20*l*., or which by this act, or by stat. 1 & 2 G. 4. c. 76. (*post*,) or either of them, are made to be recoverable by action or suit, may be sued for and recovered in any of H. M.'s courts of record at *Westminster*. Stat. 53 G. 3. c. 87. § 8. S. P.

Penalties, how recoverable.

By § 37. reciting, whereas it is expedient, that the like means of conclusively adjusting and recovering the *quantum* of the monies or gratuities to be paid to the said several persons acting or being employed in the salvage of any ship or vessel, or the materials or stores belonging thereto, or goods or persons on board thereof, should subsist, and be by law applicable in cases where the salvors shall have acted under and by the employment and authority of any magistrate, or of the commander or other superior officers, mariners, or owners of any ship or vessel in distress, as are now by law provided for adjusting the *quantum* of such monies or gratuities, which shall have become due in cases where application shall have been first made to the officers of the customs, or other the officer or officers in that behalf named and appointed in and by stat. 12 *Ann.* c. 18., and where such assistance shall thereupon have been rendered, in pursuance of the provision of that statute; it is enacted, that all and every the means which in virtue of the said last-mentioned act subsist, and may now be by law applied for the conclusively adjusting, and for the recovering of the *quantum* of the monies or gratuities to be paid to the several persons acting or being employed in the salvage of any ship or vessel, or the materials or stores belonging thereto, or goods, in cases where application shall have been first made pursuant to the said act, to officers of the customs, or other the officer or officers in that behalf mentioned, and assistance shall have been thereupon rendered in pursuance of the said act, shall be by law applicable in like manner, in cases where the salvors shall have acted under any magistrate, or of the commander or other superior officers, mariners, or owners of any ship or vessel in distress, although no such application shall have been made to, nor any authority or assistance derived from, any officer of the customs, or other the officers in the said statute mentioned; and thereupon, upon payment or tender and refusal of the *quantum* of the monies or gratuities to be paid to the persons who shall have acted in such salvage, or in case such payment or tender cannot be made, on security being given for the true payment thereof, to the satisfaction of the justices who shall have adjusted such *quantum* or gratuities, it shall not be lawful for any officer of the customs, or other person having the possession of such ship, vessel, materials, stores, or goods, any longer to retain the possession of the same, by reason or pretence of any claim or right to a compensation or gratuity of such salvage, or for having acted therein. Stat. 49 G. 3. c. 122. § 32. S. P.

For the better adjustment and payment of salvage pursuant to 12 Ann. c. 18.

§ 38. In all cases it shall be lawful for the owner or owners, or if the owner or owners refuse, for the salvors, to sell so much of the property saved as will be sufficient to defray the salvage adjudged, and all expences attending the same, and such other charges and expences as shall be allowed by the high court of

Property saved may be sold to defray the expence of salvage.

1 & 2 G. 4. c. 75. admiralty, or by the justices acting in execution of this act; and a production of an order or decree from the high court of admiralty, or of an award made by the justices acting in execution of this act, the commissioners of customs and excise shall allow the sale of such goods free from all duties: provided, that in all cases in which they may think it advisable, it shall be lawful for the commissioners of customs and excise to refer such award, which may be produced to them from the justices, to the judgment and revision of the high court of admiralty.

Public act. § 39. This act is declared to be a public act.

Schedule to which stat. 1 & 2 G. 4. c. 75. refers.

ON the ——— day of ———, in the year of our Lord ———, before me ———, at ———, in the county of ———, [ship's name,] A. B. [here insert the names of the salvors against, and name the stores and other articles, (*id est,*) *anchors and cables,* &c. as the case may be] *certain goods and merchandises lately found and taken possession of, and belonging to the said ship, whereof ——— was master, and also against the said ——— master, and the owners* [or, if the owners alone appear by themselves or agents, then leave out the master's name] *of the said goods and merchandise, in a cause of salvage* [master's name] *on which day appeared personally ——— of ———, and ——— of ———, who produced themselves as sureties for the said ———, the master, and for the owners of the said goods and merchandise, and submitting themselves to the jurisdiction of the high court of admiralty of* England, *bound themselves, their heirs, executors, and administrators, for the master and owners of the said goods and merchandise, in the sum of ——— of lawful money of* Great Britain, *unto the said ———, to answer such salvage and expences, or the value of the goods* [as the case may be] *as shall be hereinafter decreed by the said court, according to the tenor of the act in that case made and provided; and unless they shall so do, they hereby consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattels, wherever the same shall be found, to the value of the sum above mentioned.*

This bail was duly taken, acknowledged and received, at the time and place above written before me the undersigned commissioner; and I do believe and consider the persons above mentioned sufficient security for the said sum of ———. } ———

[See a similar form, stat. 49 G. 3. c. 122. schedule.]

12 An. st. 2. c. 18. By stat. 12 *An. st.* 2. *c.* 18. § 5. If any person shall make or be assisting in making any hole in the bottom, side, or other part of any ship so in distress as aforesaid, or shall steal any pump belonging thereto, or be aiding or abetting therein, or wilfully do any thing tending to the immediate loss of such ship, he shall be guilty of felony without benefit of clergy.

26 G. 2. c. 19. And by stat. 26 G. 2. *c.* 19. § 8. If oath be made before a magistrate of any such plunder or theft, or of the breaking of any such ship contrary to the 12 *An.* and the examination in writing

whereupon taken to be delivered to the clerk of the peace, he shall cause the offender to be forthwith prosecuted for the same, either in the county where the fact shall be committed, or in any county next adjoining, in which adjoining county any indictment may be laid by any other prosecutor; and if the fact be committed in *Wales*, then the prosecution shall or may be carried on in the next adjoining *English* county; and the necessary charges of such prosecution shall be paid by the treasurer of the county where the fact shall be committed, as the justices in sessions shall order; and if the clerk of the peace shall neglect his duty herein, he shall forfeit 100*l.* to him who shall sue. See 2 *East's P. C.* 649. 26 G. 2. c. 19.

Parry and *Roberts* were indicted on this statute in *Salop*, for an offence committed in the *Isle* of *Anglesea;* and the objection was taken that *Cheshire* was "the next adjoining *English* county," (of which evidence was given;) and therefore that the trial ought to have been there, and not in *Salop*. It was observed that there was a difference between the penning of the statute 26 *H.* 8. *c.* 6. § 6. which gives the general jurisdiction to the *English* judges to try offences committed in *Wales*, and that of the 26 *G.* 2. *c.* 19. § 8. in question; for the former of those statutes says, "that the justices of gaol delivery, &c. in the shire or shires of *England*, *where the king's writ runneth*, next adjoining to the lordship, marches, or other place in *Wales* where the offence was committed, shall have full power and authority," &c. But the stat. 26 *G.* 2. omits the words "*where the king's writ runneth*." But all the Judges in *November*, 1774, were of opinion that it was no mistrial: that "the next adjoining *English* county" in the latter statute meant, as in the former, "where the king's writ runneth;" namely, that the offence should be tried by an *English* judge and jury: and that *Chester* was not to be considered as an *English* county within either of those acts. *Rex* v. *Parry* and *Roberts*, *Salop Sum. Ass.* 1774. 2 *East's P. C.* 773.

Salop, and not Cheshire, is "the next adjoining English county" to Anglesea, within the meaning of the statute; being the next where the king's writ runs.

§ 3. And one justice, upon information on oath of any part of the cargo or effects of any vessel lost or stranded upon or near the coasts being unlawfully carried or conveyed away, or concealed, or of some reasonable cause of suspicion thereof, may issue his warrant for searching as in other cases of stolen goods: And if the same be found in any such house, out-house, barn, or other place, or in the custody or possession of any person not legally authorised to keep or withhold the same; and the owner or occupier, or person in whose custody or possession the same shall be found, shall not immediately upon demand deliver the same to the lawful owner, or to such other person as shall be lawfully authorised to demand the same, or shall not give a good account to such justice how he became possessed thereof; such justice, on proof of such refusal, shall commit him to the common gaol for six months, or until he shall have paid the lawful owner, or &c. treble the value thereof.

26 G.2. c.19. Justices may issue search warrants.

§ 4. If any person shall offer or expose for sale any such goods unlawfully taken away, or reasonably suspected so to have been, the person to whom they are offered, or any officer of the customs or excise, or constable, or other peace officer, may seize the same; and shall with all convenient speed carry the same or give notice thereof to one justice; and if such person or some one in

Suspected goods to be stopt.

26 G.2. c.19. his behalf shall not in 10 days next after such seizure, make out the property to be in him, or the person employing him, to the satisfaction of the justice, they shall be delivered over to the rightful owner, on payment of a reasonable reward (to be ascertained by the justice) to the seizer; and the justice may commit such offender to the common gaol for six months, or till he shall have paid to the lawful owner, or person authorised by him to receive the same, treble value.

§ 5. And if any person shall discover to any justice, magistrate, custom-house or excise officer, where any such goods are wrongfully bought, sold, or concealed, he shall be entitled to a reasonable reward, to be adjusted in case of disagreement as to *quantum* as the salvage is by 12 *An.*

12 Ann. st. 2. c.18. By stat. 12 *Ann. st.* 2. *c.* 18. § 4. If goods be found on any person that were stolen or carried off from any ship so in distress, he shall immediately on demand deliver them up to the owner or person authorised by the owner to receive the same, or in default thereof shall pay treble value, to be recovered in an action at law.

And by § 7. If the officer of customs or his deputy by fraud or wilful neglect abuse his trust, and be convicted thereof in due form of law, he or his deputy shall respectively forfeit treble damages, to be recovered in any action in any court of record, and shall be disabled from the same or any other employment relating to the customs.

26 G.2. c.19. Examination on oath. By stat. 26 G. 2. *c.* 19. § 15. The officer of the customs who shall act in preserving any such vessel or her cargo shall, as soon as conveniently may be, cause or procure all persons belonging to the vessel, and others who can give an account thereof, to be examined on oath before a justice, as to the name or description of the vessel, the names of the master, commander, chief officer and owners, and of the owners of the cargo, and of the places from or to which the vessel was bound, and the occasion of the distress; which examination the justice shall take in writing, and shall deliver a copy thereof, together with a copy of the account of the goods to the said officer of the customs, who shall forthwith transmit the same to the secretary of the admiralty, who shall publish the same in the next *London Gazette*, or so much thereof as shall be necessary for the information of the persons interested or concerned therein.

Copy transmitted to secretary of admiralty.

12 An. st. 2. c.18. By stat. 12 *Ann. st.* 2. *c.* 18. § 9. But this shall not prejudice the right of any lords of manors, or others, lawfully claiming wreck, or goods *flotsam*, *jetsam*, or *ligan*.

3 G.1. c.13. Salvage. By stat. 3 *G.* 1. *c.* 13. § 6. and several subsequent acts, the lord warden of the Cinque Ports was empowered to appoint commissioners for adjusting differences respecting salvage.

1 & 2 G.4. c.76. By stat. 1 & 2 *G.* 4. *c.* 76. intituled, "*An act to continue and amend certain acts for preventing the various frauds and depredations committed on merchants, shipowners, and underwriters, by boatmen and others, within the jurisdiction of the Cinque Ports; and also for remedying certain defects relative to the adjustment of salvage, under a statute made in the* 12*th year of the reign of her late majesty queen* Anne."

§ 1. After reciting stat. 48 *G.* 3. *c.* 130. intituled, *An act for preventing frauds and depredations committed on merchants, ship-*

owners, and underwriters, by boatmen and others, within the jurisdiction of the Cinque Ports; and also for remedying certain defects relative to the adjustment of salvage, under a statute made in the 12th year of her late majesty queen Anne; which act was to continue in force for seven years, &c.: And that by stat. 53 *G.* 3. *c.* 87. the said act, except so far as the same was altered, was further continued in force for seven years from the passing of the said act, &c.: And whereas it is expedient that the said recited acts should be further continued, except so far as the same are altered by this act; it is enacted, that it shall be lawful for the lord warden of the Cinque Ports to appoint, by any instrument under his hand and seal, three or more substantial persons in each of the Cinque Ports to appoint, by any instrument under his hand and seal, three or more substantial persons in each of the Cinque Ports, two ancient towns, and their members, to determine any difference relative to salvage (which may arise) between the master of any vessel and the person or persons bringing cables and anchors ashore; and in case any ship or vessel shall be either forced or cut from her cables and anchors, by extremity of weather, or by any other accident whatever, and leave the same in any roadstead, or other place within the jurisdiction of the Cinque Ports, two ancient towns, and their members, and the salvage cannot be adjusted between the persons concerned, then the same shall be determined by any *three* or more of the said persons so to be appointed within the space of 24 hours after such difference shall be referred to them for their determination thereof: Provided, that such commissioners shall, immediately after their nomination, proceed to elect some proper person, who shall be a notary or master extraordinary in Chancery, as their secretary or register, except to the port of *Dover*, where the register for the time being of the court of Admiralty of the Cinque Ports shall be the register; and which secretary, or register, shall enter in a book all the proceedings of such commissioners, and also a copy of the awards which they shall make; but such election shall be subject to the approbation of the lord warden. Stat. 48 *G.* 3. *c.* 130. § 1. *S. P.*

1 & 2 G. 4. c. 76.

Lord warden to appoint commissioners to determine differences relative to salvage.

Commissioners to appoint a secretary or register, subject to the approbation of the lord warden.

Proceedings to be entered.

§ 2. It shall be lawful for the said commissioners to decide on all claims and demands made by pilots, hovellers, boatmen, and other persons, for services of any sort or description rendered to any ship or vessel, as well for carrying off from the shore to such ship or vessel, any anchors, cables, or other stores from any part or port of the coast of *Kent*, *Sussex*, *Essex*, or the isle of *Thanet*, within the jurisdiction aforesaid, as for the conducting and conveying such ships and vessels from the *Downs*, and other bays and roadsteads on the coast of *Kent*, *Sussex*, and *Essex*, and the island of *Thanet*, or from the sea or any other place, to *Ramsgate*, *Dover*, or any other harbour, &c. on the said coasts, within the jurisdiction aforesaid, or for the saving and preserving, within the jurisdiction aforesaid, any goods or merchandise wrecked, stranded, or cast away from any ship or vessel, the master or owners thereof, or their agents, being present at the place where the commissioners shall be sitting; and the said commissioners shall have full power to hear and determine on all cases whatever of services rendered by pilots, boatmen, and others, to shipping within the jurisdiction aforesaid, whether such ships or vessels shall be in distress or not; and it shall be lawful for the said com-

Power to commissioners to settle all differences which may arise.

1 & 2 G.4. c.76. missioners to examine the parties or their witnesses upon their oath, which oaths may be administered by the said secretary or register. Stat. 48 *G.* 3. *c.* 130. § 2. *S. P.*

Commissioners to be paid by the owners, &c. for their trouble such fees as shall be allowed by the lord warden.

§ 3. It shall be lawful for the commissioners and their secretary or register to demand and receive of and from the owners of such ships or vessels, or the proprietors of any such goods, against whom any pilot, boatman, or other person shall make any claim or demand for services; and such owners and proprietors are hereby required to pay to them such fee or reward for deciding on every such claim as shall be adjudged by the lord warden: Provided that no person to be appointed a commissioner by virtue of this act shall have power to act in any other port than that in which he is resident, or from which his usual place of residence is not distant more than one mile; and before such commissioners shall in any case proceed to act, they shall severally take the following oath before a magistrate or a commissioner of the Court of K. B. or C. P., or a master extraordinary in Chancery; [stat. 48 *G.* 3. *c.* 130. § 3, 4. *S. P.*]; (*viz.*).

No commissioner shall act out of the place where he is resident.

Commissioners to take the following oath.

Form of oath.

I A. B. *do swear, that I have not, neither will I in any way, directly or indirectly, take or receive any fee, emolument, or reward, from any of the parties whose interests are referred to my decision (save and except such fee or reward as shall be allowed by the lord warden to be paid to me by the shipowners or proprietors of the cargo, or their agents); and that I will not accept or receive any fee whatever from the persons claiming reward or salvage; but that I will decide according to the best of my judgment, on the evidence to be brought before me, without favour or affection to either party.* *So help me* God.

Parties dissatisfied may appeal to the high court of admiralty, or the admiralty of the Cinque Ports; but the ship to be liberated, on giving bail in double the amount of the award.

§ 4. In case the party claiming salvage or compensation for services rendered, or the parties who are to pay the same, or their agents, shall be dissatisfied with such award, it shall be lawful for either of them, within eight days after such award is made, but not afterwards, to declare to the commissioners their desire of obtaining the judgment of some competent court of admiralty respecting the said salvage or compensation, and thereupon such parties shall be required by the commissioners to declare whether they will proceed in the court of Admiralty of the Cinque Ports, or the high court of Admiralty of *England*, and they shall so proceed within 20 days from the date of such award, by taking out a monition against the adverse party; but in such case the said commissioners are hereby empowered to permit the said ship and her cargo, notwithstanding such declaration and proceeding, to depart on her voyage, or to deliver to the owners and proprietors, or their agents, any goods or merchandises respecting which any claim for salvage shall be made upon the owners or proprietors or their agents, giving sufficient bail in double the amount, and which bail the said commissioners are authorised to take and certify according to the form contained in the schedule hereunto annexed, and to transmit the same without delay to the court of Admiralty, in which the intention of proceeding shall be so declared, together with a true certificate in writing of the gross value of the whole ship and cargo, or other goods and merchandises respecting which salvage shall be claimed, and also an official copy of such proceedings and awards, certified by the secretary or register, and the same

Bail to be taken and certified according to schedule annexed.

shall be admitted by such court of Admiralty as evidence. Stat. 48 *G.* 3. *c.* 130. § 5. *S. P.* 1 & 2 G. 4. c. 76.

The appeal to be conclusive.

§ 5. On an appeal so made to the court of Admiralty of the Cinque Ports, or to the high court of Admiralty, the same shall be final, and no ulterior appeal shall lie to the king in Chancery.

Persons cutting away or defacing buoy ropes, &c. deemed guilty of felony.

§ 6. If any person or persons shall wilfully cut away, cast adrift, remove, alter, deface, sink, or destroy, or shall do or commit any act with intent and design to cut away, cast adrift, remove, alter, deface, sink, or destroy, or in any other way injure or conceal any buoy, buoy rope, or mark, belonging to any ship or vessel, or which may be attached to any anchor or cable belonging to any ship or vessel whatever, within the jurisdiction aforesaid, with intent thereby to defraud or injure any person or persons whatsoever, or body corporate, such person or persons so offending shall, on being convicted of such offence, be deemed and adjudged guilty of felony, and shall be liable to be transported for any period not exceeding 14 years. Stat. 48 *G.* 3. *c.* 130. § 6. *S. P.*

Anchors, &c. found within the jurisdiction, to be deposited in either of the places herein mentioned, &c. or the persons having them in possession shall be adjudged guilty of receiving stolen goods.

§ 7. All anchors, cables, buoys, ropes, or other ships' stores or materials, or any goods or merchandises of any sort whatever, which may have been parted with, cut from, or left by any ship or vessel in the *Downs*, or elsewhere, within the jurisdiction aforesaid, whether the same shall be in distress or otherwise, and which shall have been weighed, swept for, or taken possession of by any pilots, boatmen, hovellers, or other person or persons, shall be by them delivered either at *Ramsgate*, *Deal* or *Dover*, *Harwich*, *Brightlersea*, or *Wivenhoe*, six public places of deposit declared by this act for the reception of all such articles, or such other places as shall be declared by the lord warden, in the same state in which they are found, to the serjeants of the Admiralty of the Cinque Ports aforesaid, their deputy, or such other person as he shall authorise to receive the same; but if any such articles shall not be so delivered immediately, or duly reported to such serjeants, or their deputies, on the finding thereof, and shall afterwards be discovered in the possession or power of such pilots, boatmen, hovellers, or other person, he, or they shall, on conviction, be adjudged guilty of receiving goods knowing them to have been stolen, and shall suffer the like punishment as if the same had been stolen on shore. Stat. 48 *G.* 3. *c.* 130. § 7. *S. P.*

All wrecked merchandize and ship stores to be also deposited in like manner.

§ 8. All merchandise, materials of any sort, or marine stores of every description, whether belonging to H. M. or to any *British* subjects, or foreigners, which may be preserved from any ship or vessel stranded, deserted by her crew, or wrecked, either on shore, or on the *Goodwin* or any other sand or shoal, or any part of the main land, or any port or place, within the jurisdiction aforesaid, shall be landed and delivered at one of the six places of deposit, belonging to the lord warden's deputies at *Ramsgate*, or *Deal*, or *Dover*, *Harwich*, *Brightlersea*, or *Wivenhoe*, or such other place as shall be appointed by the lord warden; and if any person who shall have preserved or taken possession of any such merchandise or marine stores, shall sell, dispose of, or otherwise make away with the same, or shall in any manner conceal, deface, take out, or obliterate the marks or numbers thereon, or alter the same in any manner, with intent thereby to prevent the discovery and identity of such articles by the owner thereof, such person

If sold, or marks defaced by the salvors, they shall be adjudged guilty of felony.

1&2 G. 4. c. 76. shall be guilty of felony. Stat. 48 *G.* 3. *c.* 130. § 8. contains the same provision, except as to *Harwich*, *Brightlersea*, and *Wivenhoe*.

Officers of the lord warden may seize anchors, stores, &c. concealed within their jurisdiction, &c.

§ 9. Nothing herein contained shall extend to the preventing the serjeant's deputies, or any other officer of the lord warden, from seizing all such anchors, cables, buoys, buoy ropes, or other ships' stores or materials as aforesaid, and likewise all such merchandise and marine stores as aforesaid, which they shall find concealed, or attempted to be concealed, or which they shall find in the possession of any person who shall be conveying, or in the act of preparing to convey the same out of the said jurisdiction, or from any place where the same shall have been landed, to any other place, other than to one of the said public places of deposit; but it shall be lawful in all such cases, for the officers aforesaid to seize the same as well on shore as at sea, and to take and carry the same to one of the said public places of deposit. Stat. 48 *G.* 3. *c.* 130. § 9. *S. P.*

Receivers to be subject to the same punishment as though the goods had been stolen on shore.

§ 10. If any person within the jurisdiction aforseaid, shall knowingly and with intent to defraud and injure the true owner thereof, purchase or receive any anchors, cables, ropes, or other ships' stores or materials of any description whatever, or any merchandize or lading which may have been taken up, weighed, swept for, or taken possession of, whether the same shall have belonged to any ship or vessel in distress or otherwise, or whether the same shall have been preserved from any wreck within the jurisdiction aforesaid, such person shall on conviction be deemed guilty of receiving stolen goods, knowing the same to be stolen, as if the same had been stolen on shore, and suffer the like punishment as for a misdemeanor at the common law, and be also liable to be transported for seven years, in the discretion of the court before which he shall be tried. Stat. 48 *G.* 3. *c.* 130. § 10. *S. P.*

Lord warden's officers authorized to seize anchors, &c. taken up within the limits of the Cinque Ports, though removed out of such limits.

§ 11. And whereas it frequently happens, that anchors, cables, and other marine stores, or merchandize, which have been weighed, swept for, or taken possession of, within the jurisdiction aforesaid, are, for fraudulent purposes, carried away to *Rochester*, *London*, *Portsmouth*, and other places not within the jurisdiction aforesaid, and the officers of the lord warden cannot, by reason of such removal, recover the same; it is enacted, that it shall be lawful for the serjeants of the admiralty of the Cinque Ports, deputies, or any other officer of the lord warden to seize such anchor, cable, or other marine stores or merchandize, out of the jurisdiction aforesaid, and to carry the same to some one of the aforesaid public places of deposit, stat. 48 *G.* 3. *c.* 130. § 11. *S. P.*

Or (by stat. 1 & 2 *G.* 4. *c.* 76. § 11., *only*) to place the same in a place of security, till proceedings shall be instituted either in the court of admiralty of the Cinque Ports, or in the high court of admiralty.

By stat. 48 *G.* 3. *c.* 130. § 12. every pilot, boatman, or other person, within the above jurisdiction, who shall counsel, instruct, direct, advise, or procure any master or other person on board any vessel within the above jurisdiction, whether she be at the time in distress or otherwise, to cut such vessel's cable or buoy-rope, or to do any other act whatever which shall or may tend to the destruction or wreck of such ship, with intent thereby to prejudice any owner or person, body politic or corporate, that hath underwritten, or shall underwrite any policy or policies of insur-

ance on such vessel, or her freight, or on any goods laden on board her, shall on conviction be deemed guilty of felony, and shall be liable to not exceeding 14 years' transportation. 48 G. 3. c. 130.

By stat. 1 & 2 G. 4. c. 76. § 12. All persons who shall trade or deal in buying and selling anchors, cables, sails, old junk or paper stuff, old iron, or marine stores of any kind or description, within the jurisdiction aforesaid, shall have their names with the words, "*Dealer in Marine Stores*," painted distinctly in letters of not less than six inches in length, upon the front of all their storehouses, warehouses, and other depôts for such goods; and in default they shall, on conviction before any magistrate within the limits aforesaid, forfeit any sum not exceeding 20*l.* nor less than 10*l.*, one half to the informer, and the other moiety to the poor of the parish where such offence shall be committed; and it shall not be lawful for such dealers or traders to cut up any cables or part of the same, or to uncant, untwine, or unlay the same, or cordage of any description into junk or paper stuff, nor any woulding, wounding, or worming, or any cable matting on the same, or on rigging, on any pretence whatsoever, without first obtaining a permit from the lord warden's deputies, or one of them, which permit shall not be granted unless an affidavit shall have been first made before some one of the magistrates, and shall have been delivered to and left with the person granting such permit, in which affidavit there shall be sworn that the cable and cordage, so intended to be cut up, had been purchased fairly and without fraud, and without any knowledge or suspicion on his part that the same had been dishonestly come by; and in which affidavit shall also be specified the particular quality and description of such cable or cordage, and the names of the sellers thereof, which affidavit shall be set forth at length in the permit. Stat. 48 G. 3. c. 130. § 13. S. P.

1 & 2 G. 4. c. 76. Dealers in ship's stores to have their names painted on their storehouses.

Penalty.

No cables, &c. to be cut up without a permit from one of the lord warden's deputies.

§ 13. And for the more effectual prevention of fraud in this respect, it is enacted, that all dealers in such marine stores, within the limits of the Cinque Ports, &c. shall keep books, in which entries shall be regularly made of all such marine stores as shall be by them from time to time bought, containing a true account and description of the times when the same were so bought, and of the names and places of abode of the sellers thereof; and before the party who shall have obtained such permit for the cutting up of any such cable or cordage (as hereinbefore required to be obtained) shall proceed to cut up the same, there shall be published by the space of one week at least before the time of cutting up of the same, one or more advertisements in some public newspaper printed within the counties of *Kent*, *Sussex*, and *Essex*, and near to the usual place of abode of such party, notifying that such party had obtained such permit for cutting up such quantity of cable or cordage, and of such kind and quality as therein described, a true copy of which permit shall be inserted in such advertisement; whereupon it shall be lawful for every person who may have just cause to suspect, and shall have verified upon oath the fact of such his suspicion before any of the magistrates within the limits aforesaid, by warrant of such magistrate, to require of and from such dealer, the production and examination of the books of entries hereby required by him to be kept, and to inspect and examine the cable or cordage described in such permit; and

Dealers to keep an account of the marine stores bought by them.

Notice to be advertised before cutting up cable or cordage.

1&2 G.4. c.76. Penalty for refusing to produce the book of entries, or neglecting to give notice before cutting up cable or cordage.

in case any such dealer shall, when so required, neglect or refuse to produce to the person named in such warrant, the books containing the entries of such dealer, or shall neglect to keep any such books, or to permit such inspection and examination as aforesaid, or shall, after obtaining such permit for the cutting up of any cable or cordage, and before the cutting up of the same, neglect to publish such one or more advertisements, the dealer or dealers so offending in all or any of the particulars hereinbefore mentioned, shall forfeit for every such offence, being his or their first offence, any sum not exceeding 20*l.* nor less than 10*l.*; and for every second and further offence, any sum not exceeding 50*l.*, nor less than 30*l.*; one half of which penalties shall, on conviction before any of such magistrates duly authorised to act within the limits aforesaid, be paid to the informer, and the other half to the poor of the parish in which such offence shall be committed; and in case any of the penalties by this act imposed shall not be paid, with the charges incident to the conviction, immediately upon such conviction, the same shall be levied by distress upon the goods and chattels of every such offender or offenders; and in case there shall be no sufficient distress, then every such offender or offenders shall be committed by such magistrate as aforesaid, to the common gaol within the limits aforesaid, in the case of any first offence, for the space of three months, and in the case of any second or further offence, for the space of six months, unless the said penalty and charges shall be sooner paid. Stat. 48 *G.* 3. *c.* 130. § 14. *S. P.*

Penalties how to be levied.

Inhabitants to be competent witnesses.

§ 14. The inhabitants of any parish, township, or place, within the jurisdiction aforesaid, shall be competent witnesses, notwithstanding the penalty, or any part thereof, may be given to the poor of such parish, &c. or otherwise in aid or exoneration of such parish, &c. Stat. 48 *G.* 3. *c.* 130. § 15. *S. P.*

The lord warden and his deputies, judge, &c. to have the like power as justices or commissioners under this act.

§ 15. The lord warden of the Cinque Ports, and the lieutenant of *Dover Castle*, and the deputy wardens of the Cinque Ports, and the judge official and commissary of the court of admiralty of the Cinque Ports, &c. and any other officer who shall be specially appointed by the lord warden, may execute, within the jurisdiction aforesaid, all the acts, matters, and things contained in this act, in like manner as any magistrate, or any commissioner appointed by virtue of this act, is authorised to execute. Stat. 48 *G.* 3. *c.* 130. § 16. *S. P.*

Manner of issuing commissions for the punishment of offences, agreeably to 28 H.8. c.15.

§ 16. And for the more speedy administration of justice, as often as H. M. shall direct a commission, according to the provisions of stat. 28 *H.* 8. *c.* 15. to the admiral or admirals, or his or their lieutenant deputy and deputies, it shall be lawful for H. M., on the application of the lord warden, to direct such commission jointly to the admiral or admirals, or his or their lieutenant deputy and deputies, and also to the lord warden of the Cinque Ports, and to his deputy; and the commissioners who shall sit by virtue of such commission, so jointly addressed, to whatever shire or place in the realm the same shall be limited, shall have full power to inquire into, try, and determine all offences named in the said act, or in any other act relating to proceedings under such commission, by the oaths of 12 lawful inhabitants in the shire limited in the said commission, whether the said offences shall have been committed within the jurisdictions of the lord admiral of *England*,

or of the lord warden of the Cinque Ports; and every trial, conviction, judgment, and proceeding whatsoever under such commission, shall be as good and effectual in law, and shall be followed by the same consequences to the offenders, as if the same were had by virtue of any separate commission to be issued under the provisions of the aforesaid act of king *Henry* 8th: Provided that this act shall not extend to the taking away, abridging, prejudicing, or impeaching, in any manner whatever, the jurisdiction of the high court of admiralty of *England*, or the jurisdiction of the admiralty court of the Cinque Ports, &c. Stat. 48 *G.* 3. *c.* 130. § 17, 18. *S. P.* 1 & 2 G. 4. c. 76.

Reservation of the rights of the admiralty court, and of the admiralty of the Cinque Ports.

§ 17. Also this act shall not extend to the taking away, abridging, hindering, prejudicing, or impeaching of any grant, liberties, franchises, and privileges heretofore granted to and vested in the corporation of the Trinity House of *Deptford Strond.* Stat. 48 *G.* 3. *c.* 130. § 19.

Reservation of the rights of the Trinity House.

§ 18. And whereas doubts have arisen as to the exact boundarise of the jurisdiction of the lord high admiral and the lord warden of the Cinque Ports, it is declared and enacted, that the boundaries of the jurisdiction of the lord warden of the Cinque Ports, in regard to any matter contained in this act, shall be deemed to be as follows; (that is to say), from a point to the westward of *Seaford*, in the county of *Sussex*, called *Red Cliff*, including the same; thence passing in a line one mile without the sand or shoal called *The Horse of Willingdon*, and continuing the same distance without the ridge and new shoals; and thence in a line within five miles of *Cape Grisnez* [*Crisnes*, 48 *G.* 3. *c.* 130. § 20.] on the coast of *France;* thence round the shoal called *The Overfalls*, two miles distant from the same; thence in a line without, and the same distance along the eastern side of the *Galloper Sand*, until the north end thereof bears west-north-west true bearing from the west-north-west bearing of the *Galloper*, it runs in a direct line across the shoal called *The Thwart Middle*, till it reaches the shore underneath the *Maze Tower;* from thence following in a line of the shore up to *Saint Orsyth*, in the county of *Essex*, and following the course of the shore up [*to* in stat. 1 & 2 *G.* 4. *c.* 76. § 18. only], the river *Coln* to the landing-place nearest *Brightlingsea;* from thence in a direct line to *Shoe Bacon;* from thence to the point of *Shellness*, on the Isle of *Shippey;* and from thence across the waters to *Feversham;* and from thence following the line of coast round the *North* and *South Forelands*, and *Beachy Head*, till it reaches the said *Red Cliff*, including all the waters, creeks, and havens comprehended between them: Provided, and it is hereby declared, that nothing in this act contained shall extend to enlarge or abridge the local limits of the ancient jurisdiction, rights, and privileges of the lord high admiral of *England*, or the lord warden or admiral of the Cinque Ports, or their representatives; but that the same shall remain according to ancient usage, and the description herein-before contained shall only be deemed applicable to the purposes of this act. Stat. 48 *G.* 3. *c.* 130. § 20. *S. P.*

Boundaries of the jurisdiction of the lord warden of the Cinque Ports.

§ 19. All and every the means which, in virtue of the stat. 12 *Ann.* *c.* 18., subsist, and may now be by law applied for the conclusively adjusting, and for the recovering of the quantum of the monies or gratuities to be paid to persons acting or being em-

For the better adjustment and payment of salvage under 12 Ann. c. 18.

1&2 G.4. c.76. ployed in the salvage of any ship, vessel, or goods, in cases where application shall have been first made pursuant to that statute, to officers of the customs, or other the officers therein mentioned, and assistance shall have been thereupon rendered in pursuance of the provisions of that statute, shall be applicable and available, in like manner, in cases where the salvors shall have acted under and by the mere employment and authority of the commander or other superior officers, mariners, or owners of any ship or vessel in distress, although no such application shall have been made to, nor any assistance derived from, any officers of the customs, or other the officers in the said statute mentioned; and upon payment or tender and refusal of the quantum of monies or gratuities to be paid in such salvage, or in case such payment or tender cannot be made, or security being given for the due payment thereof, to the satisfaction of the commissioners who shall have adjusted such quantum of gratuities, it shall not be lawful for any officer of the customs, or other person having the possession of such ship, vessel or goods, any longer to retain the possession or custody of the same, or any part thereof, by reason of any claim to a compensation for such salvage as aforesaid, or for having acted or been employed therein. Stat. 48 *G.* 3. *c.* 130. § 21. *S. P.*

48 G. 3. c.130. By stat. 48 *G.* 3. *c.* 130. § 22. In all cases when the salvors have acted without application made to, and without authority or assistance derived from any officer of customs, or other officer in riners, or owners of such vessel so saved, or the merchant or 12 *A. st.* 2. *c.* 18. § 1. mentioned, and the superior officers, ma- other person whose goods are so saved, or their agents, shall disagree with the salvors touching the quantum of the monies or gratuity deserved by any persons so employed as above, the commander of the vessel so saved, or the owner or merchant interested in the goods, or their agents, and such salvors may nominate three of the neighbouring justices of the peace to adjust the quantum of the monies or gratuities to be paid to such salvors, and if the parties shall not agree in such nomination, then on application of any of the parties to any one neighbouring justice, he shall nominate two other like justices, who shall thereupon adjust the quantum of the monies and gratuities to be paid to all and each of such salvors, who shall disagree with such superior officer, &c. touching the quantum of monies or gratuity to be paid to him or them respectively, for his having been employed and acted in such salvage.

1&2 G.4. c.76. **Owners or salvors may sell so much of the property saved as will defray salvage.**

§ 20. In all cases it shall be lawful for the owners, or if the owners refuse, for the salvors, to sell so much of the property saved, as will be sufficient to defray the salvage adjudged, and all expences allowed by the high court of admiralty, or by the court of admiralty of the Cinque Ports, or by the commissioners appointed under this act; and on the production of an order from the high court of admiralty, or from the court of admiralty of the Cinque Ports, or of an award made by the commissioners under this act, the commissioners of customs and excise shall allow the sale of such goods free from the payment of duties: provided that in all cases in which they may think it advisable, it shall be lawful for the commissioners of the customs and excise to refer any such award to the judgment or revision of the high court of admiralty.

§ 21. Nothing herein contained shall extend to affect or impeach the jurisdiction to be exercised within the Cinque Ports, or to affect or abridge in any degree the jurisdiction or authority of the high court of admiralty. **1 & 2 G. 4. c. 76. Jurisdiction of Cinque Ports not to be affected.**

§ 22. This act is declared to be a public act, &c. **Public act.**

The Schedule to which stat. 1 & 2 *G.* 4. *c.* 76. (§ 4.) refers.

On the ——— *day of* ———, *in the year of our Lord* ———, *before, &c.* ——— *at* ——— *in the county of* ———.

[Ship's Names.]

A. B. [here insert the name of the salvors] *against the said ship* ———, *whereof* ——— *was master, her tackle, apparel, and furniture, and the goods, wares, and merchandises on board the same; and also against the said* ——— *master, and the owners of the said ship and cargo* [or, as the case may be, *against certain goods and merchandises lately laden on board the said ship, whereof* ——— *was master; and also against the said* ——— *master, and the owners* (or if the owners alone appear by themselves or agents, then leave out the master's name,) *of the said goods and merchandises*], *in a cause of salvage.*

[Master's Names.]

On which day appeared personally W. X. *of* ——— *and* Y. Z. *of* ——— *who produced themselves as sureties for the said* ——— *the master, and for the owners of the said ship and cargo,* [or, as the case may be,] *for the said* ——— *master and owners of the said goods and merchandises, and submitting themselves to the jurisdiction of the High Court of Admiralty of* England, [or, *the Court of Admiralty for the Cinque Ports*, as the case may be,] *bound themselves, their heirs, executors, and administrators, for the said master and owners of the said ship and cargo,* [or, as the case may be,] *for the said* ——— *master and owners*, or, *for the owners of the said goods and merchandises, in the sum* ——— *pounds of lawful money of* Great Britain, *unto the said* A. B., *&c. to answer the salvage and expences of the said ship and cargo,* [or, as the case may be,] *on the said goods and merchandise, as shall hereafter be decreed by the said court, according to the tenor of the act in that behalf made and provided; and unless they shall so do, they hereby consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattels, wheresoever the same shall be found, to the value of the sum above mentioned.*

This Bail was duly taken, acknowledged, and received at the time and place above written, before me the undersigned commissioner; and I do hereby farther certify that I do believe and consider the persons above mentioned sufficient security for the sum of ——— *pounds.*	W. X. Y. Z.

By stat. 53 *G.* 3. *c.* 87., stats. 48 *G.* 3. *c.* 130. and 49 *G.* 3. *c.* 122. except so far as the same are altered by this act, shall continue in force for seven years from the passing of this act, and from thence to the end of the then next session of parliament, and no longer. As to the further continuance and present force of this act, see stat. 1 & 2 *G.* 4. *c.* 75. § 1. p. 669. **53 G. 3. c. 87.**

Order and Award for Wreck; pursuant to stat. 1 & 2 *G*. 4. *c*. 75. § 7. *ante*, p. 671.

County of ——— } *THE order and award of* J. P., K. P., *and* N. P. *esqrs., three of his majesty's justices of the peace in and for the said county, and residing next unto the parish of* ———, *in the said county, made the* ——— *day of* ——— *in the year of our Lord one thousand eight hundred and* ———. *Whereas it has appeared unto us the said justices, upon the complaint of* A. C. *of* ———, *in the said county, ship agent, that on the* ——— *day of* ——— *last past, at* ———, *in the parish of* ——— *aforesaid, the ship (or vessel) called the* Dolphin, *of* ———, *in the county of* ———, John Tar, ———, *master, bound from* ——— *aforesaid to* ———, *in the county of* ———, *was stranded at* ———, *in the parish of* ——— *aforesaid; and that he the said* A. C. *with great labour and expence succeeded in saving the crew, landing the cargo, and getting the said ship from the shore where stranded, and that he hath conveyed the same to the port of* ———, *in the said county of* ———: *And whereas* John Tar, ———, *the said master* [*owner, or owners, or his, her, or their agent or agents,* as the case may be,] *together with the said* A. C. *is* [or *are*] *now present before us the said justices for the purpose of having the claims and demands of the said* A. C., ———, *for such services as aforesaid, heard and determined: We, therefore, the said justices, having examined into the cause and circumstances of the premises, upon oath, and all matters relating thereto, do hereby order and award, that he, the said* ———, *shall, upon notice of this our order and award, pay unto him the said* A. C. *the sum of* ——— *for his services of every description as aforesaid.* [Or thus, if the ship belongs to one party, one part of the cargo to another, and another part of the cargo to a third party; after the word AWARD, continue and say, *as follows; viz. that* A., B., C. ———, *and* D. ———, *of* ——— *aforesaid, being the owners of the said ship* (or *vessel*) *shall, upon notice of this our order and award, pay unto him the said* A. C. *the sum of* ———; *that* E. *and* F. *of the city of* ———, *merchants, being the owners of a part of the cargo of the said ship* (or *vessel*) *shall, upon notice of this our order and award, also pay unto the said* A. C. *the sum of* ———; *and that* G., H., *and* I. *of* ———, *in the county of* ———, *merchants, being the owners of another part of the cargo of the aforesaid ship* (or *vessel*) *shall, upon notice of this our order and award, likewise pay unto the said* A. C. *the sum of* ——— *for the services of every description rendered by the said* A. C. *as aforesaid.*] *Given under our hands and seals, at* ———, *in the said county of* ———, *the day and year first above written.*

J. P. (*L. S.*)
K. P. (*L. S.*)
N. P. (*L. S.*)

As to the Burial of dead human bodies cast on shore, see stat. 48 *G*. 3. *c*. 75. Vol. I. p. 511—515.

CONCLUSION.

HAVING thus finished the work proposed, it may be requisite, upon the whole, to subjoin one single reflection, which will occur to every reader in perusing almost every one of the larger titles of this book; and that is, concerning the possibility and expediency of reforming the statute law. The statutes at large, from the very nature of the thing, have in process of time become very cumbersome and very intricate. They are not to be purchased but for a larger sum of money, nor to be understood without a greater expence of time, than a wise man would often choose to employ in that way.

The course to be taken in that matter seems to be this:

First, actually to repeal all those statutes, and parts of statutes, which are *virtually repealed* by subsequent contradictory statutes.

Secondly, to repeal all those statutes which are *obsolete*, and grown out of use, by the alteration of times and circumstances.

Thirdly, to repeal all those statutes which being neither contradicted by subsequent statutes, nor become obsolete, yet are rendered *useless* by subsequent statutes enacting the same things over again, with alterations and amendments.

Fourthly, to repeal or alter all those statutes which are *frivolous*, that is, which possibly cannot or probably never will be executed; such as those which appoint an offender to be whipped by the hands of the common hangman, where perhaps there is no such officer; or which prohibit an offence under a very small penalty to be recovered in the courts at *Westminster*, where the reward will not countervail the expence of recovering it.

Fifthly, to omit all those statutes which, although enacted to be public statutes, yet are only of *private concern*; such as those for bridges in particular places, or paving the streets in such a market town; and the like.

Sixthly, as to the rest, to lay all the statutes, and clauses of statutes together, which relate to the same subject, and out of the whole to compose one, two, or more uniform and consistent statutes; and then to repeal all those other, as workmen destroy the scaffolding when they have erected the building.

I know but of one material objection against this method of proceeding; and that is, that the law being now for the most part well settled upon the statutes, notwithstanding their acknowledged disorder and confusion, this would tend to unsettle all again, by breaking the connection which there is between one statute and another, and one part of a statute and another, altering the words and phrases, and after all, perhaps, not much mend-

ing the matter, since it is possible that the new statutes may be as liable to objections as the former were.

But this is an argument not so much against the thing itself, as against the manner in which it may be executed. As to breaking the connection, it is certain that for the most part there is no connection; and where there is, that may easily be preserved. And it ought to be laid down as an invariable rule, to retain as much as possible the identical words and sentences of the former statutes; only rejecting what is superfluous, inserting the clear law as it now stands, and putting the same into a form more regular, concise, and easy. And this seemeth no way impossible to be done by any person of a tolerable understanding, endowed only with a clear head and much patience.

ADDENDUM.

Page 84. end of line 15 from bottom, add:—

Punishment changed to transportation, &c.

BUT now by stat. 5 *G.* 4. *c.* 107. § 5., reciting "whereas it is expedient that the crimes of personating and falsely assuming the name and character of any person entitled to prize money or pension for the purpose of fraudulently receiving the same, should no longer be punished with death: It is enacted, that from and after the passing of this act, (24th *June* 1824,) whosoever shall willingly and knowingly personate or falsely assume the name or character of any officer, soldier, seaman, marine, or other person entitled or supposed to be entitled to any wages, pay, pension, prize money, or other allowance of money for service done in H. M.'s army or navy, or shall personate or falsely assume the name or character of the executor or administrator, wife, relation, or creditor of any such officer or soldier, seaman, marine, or other person, every such person being thereof convicted, shall be liable at the discretion of the court, to be transported beyond the seas for life, or for any term of years not less than seven, or to be imprisoned only, or imprisoned and kept to hard labour in the common gaol or house of correction for any time not exceeding seven years."

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THE END.

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